



**COMMISSION AGENDA
SESSION OF THE CITY COMMISSION TO BE HELD AT THE
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, JUNE 1, 2021
6:00 PM**

1. MEETING CALLED TO ORDER

“As a courtesy to others, please silence all electronic devices during the meeting.”

“Citizens desiring to speak under Hear Audience shall submit a request form for the City Clerk prior to the meeting. Forms are available at the door or from the City Clerk.”

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A PRESENTATION OF CERTIFICATE OF COMPLETION - INSTITUTE FOR ELECTED MUNICIPAL OFFICIALS II - MAYOR OLGA GONZALEZ, VICE MAYOR FELIX ORTIZ, AND MAYOR PRO TEM JIM FISHER

Presentation of Certificates of Completion to Mayor Olga Gonzalez, Vice Mayor Felix Ortiz, and Mayor Pro Tem Jim Fisher for completion of the Institute for Elected Municipal Officials II training held April 23-24, 2021.

3.B PRESENTATION OF RETIREMENT WATCH TO BILLY MIRANDA

The presentation Billy Miranda's retirement watch. Billy is retiring from the City after 35 years of dedicated service as a Building Inspector 3.

3.C PROCLAMATION - JUNETEENTH DAY

The request is for the City Commission to present a Proclamation in honor of "Juneteenth Day."

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

4.A PUBLIC HEARING - SECOND AND FINAL READING - PROPOSED ORDINANCE #21-06 - ESTABLISHING A CITIZENS' POLICE REVIEW BOARD

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, TITLE II, ADMINISTRATION, CHAPTER 2-3, BOARDS AND COMMISSIONS, ESTABLISHING A CITIZENS' POLICE REVIEW BOARD; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

Approval of the Second and Final Reading of Proposed Ordinance 21-06.

4.B PUBLIC HEARING - FIRST READING - PROPOSED ORDINANCE #21-07 - ADOPTING AND ENACTING A NEW CITY CODE OF ORDINANCES

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE CITY OF KISSIMMEE, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

Approval of the First Reading of Proposed Ordinance 21-07 for Recodification of the City's Code of Ordinances.

5. PUBLIC HEARINGS

None

6. HEAR AUDIENCE

"ANYTHING REQUIRING A VOTE WILL BE HEARD AT A LATER TIME"

7. CONSENT AGENDA

THE CONSENT AGENDA IS A TECHNIQUE DESIGNED TO EXPEDITE HANDLING OF ROUTINE MISCELLANEOUS BUSINESS OF THE CITY COMMISSION. THE CITY COMMISSION IN ONE MOTION MAY ADOPT THE ENTIRE AGENDA. THE MOTION FOR ADOPTION IS NON-DEBATABLE AND MUST RECEIVE UNANIMOUS APPROVAL. BY REQUEST OF ANY INDIVIDUAL MEMBER, ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA AND PLACED UPON THE REGULAR AGENDA FOR DEBATE.

7.A COMMISSION MINUTES APPROVAL

Request Commission approval of the April 27, 2021 Commission Workshop Minutes.

7.B AWARD CITY SIGNATURE FESTIVAL/EVENTS PERFORMANCE AND PRODUCTION SERVICES AGREEMENT

Approval and execution of the City Signature Festival/Events Performance and Production Services Agreement with aXis Productions & Events for services described in RFP 2021-003.

7.C AWARD LANDSCAPE SERVICES AGREEMENT FOR KISSIMMEE LAKEFRONT PARK

Approval to award landscape services for Lakefront Park to Groundtek of Central Florida, Inc. in an amount up to \$136,500 and authorize the City Manager to sign the agreement and any subsequent renewals.

7.D ACCEPTANCE OF A FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM GRANT AGREEMENT TO UPDATE THE AIRPORT MASTER PLAN

Approval to accept a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to update the Airport Master Plan for Kissimmee Gateway Airport.

7.E ACCEPTANCE BY RESOLUTION OF A FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION GRANT AGREEMENT FOR AN AUXILIARY WEATHER STATION TO SUPPORT THE AIR TRAFFIC CONTROL TOWER

Acceptance of a Florida Department of Transportation (FDOT) Public Transportation Grant Agreement for an auxiliary weather station to support the air traffic control tower at Kissimmee Gateway Airport.

7.F TRANSFER FROM AIRPORT RESERVES FOR AUXILIARY WEATHER STATION TO SUPPORT THE AIR TRAFFIC CONTROL TOWER

Approval to transfer funds from Airport reserves to complete financial requirements for auxiliary weather station to support the air traffic control tower.

7.G AMENDMENT #10 TO THE PROFESSIONAL SERVICE AGREEMENT WITH AVCON, INC. FOR BIDDING AND ENGINEERING SERVICES TO OVERSEE THE CONSTRUCTION OF A WEATHER STATION

Approval of amendment #10 to the professional service agreement between the City of Kissimmee and AVCON, Inc. dated December 19, 2017, for the design, bidding, and construction engineering services for the construction of a weather station.

7.H AMENDMENT #11 TO THE PROFESSIONAL SERVICE AGREEMENT WITH AVCON, INC. TO UPDATE THE AIRPORT MASTER PLAN

Approval of amendment #11 to the professional service agreement between the City of Kissimmee and AVCON, Inc. dated December 19, 2017, to oversee the completion of an update to the Airport master plan.

7.I CITY OF KISSIMMEE PARTICIPATION IN THE OSCEOLA COUNTY HOME CONSORTIUM

Authorization for the Mayor to sign a letter renewing participation in the Osceola County Consortium for Fiscal Years 2022-2024.

7.J AMENDMENT TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION GRANT AGREEMENT FOR DESIGN OF THE WOODSIDE DRAINAGE IMPROVEMENT PROJECT

Approval of an amendment to extend an Florida Department of Environmental Protection (FDEP) grant agreement to allow additional time for design of Phase II of the Woodside Drainage Improvement Project.

7.K POLICE DEPARTMENT EVIDENCE ROOM RENOVATION BY GROVE CONSTRUCTION

Approval to utilize the City's master agreement with Grove Construction to complete renovations to the evidence area at the Police Department in the amount of \$70,153.13.

7.L POLICE DEPARTMENT SERGEANT'S OFFICE RENOVATION BY GROVE CONSTRUCTION

Approval to utilize the City's master agreement with Grove Construction to complete renovations to the sergeant's office at the Police Department in the amount of \$55,360.62.

7.M DEVELOPER AND ESCROW AGREEMENT BETWEEN FIRST INDUSTRIAL, L.P., KELLY PROPERTIES, CHICAGO TITLE INSURANCE COMPANY AND THE CITY OF KISSIMMEE REGARDING FLORA RIDGE PROJECT

Approval of Developer and Escrow Agreement.

8. DISCUSSION ITEMS

8.A ANNUAL ADVISORY BOARD APPOINTMENTS/REAPPOINTMENTS AND A VACANCY ON THE BOARD OF ADJUSTMENT AND HISTORIC PRESERVATION BOARD

Commission requested to appoint two replacements to fill the vacancy on the Board of Adjustment and Historic Preservation Board as well as reappointments or replacements to fill annual Board terms expiring May 31, 2021.

9. HEAR CITY OFFICIALS

9.A CITY MANAGER

9.B CITY ATTORNEY

9.C CITY COMMISSION

10. ADJOURNMENT

IN ACCORDANCE WITH FLORIDA STATUTES 286.105: ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

IN ACCORDANCE WITH FLORIDA STATUTE 286.26, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE OFFICE OF THE CITY CLERK, 101 CHURCH STREET, KISSIMMEE, FL 34741, AND (407) 518-2309.

ITEM 3.A

PRESENTATION OF CERTIFICATE OF COMPLETION - INSTITUTE FOR ELECTED MUNICIPAL OFFICIALS II - MAYOR OLGA GONZALEZ, VICE MAYOR FELIX ORTIZ, AND MAYOR PRO TEM JIM FISHER

Request

Presentation of Certificates of Completion to Mayor Olga Gonzalez, Vice Mayor Felix Ortiz, and Mayor Pro Tem Jim Fisher for completion of the Institute for Elected Municipal Officials II training held April 23-24, 2021.

Explanation

Mayor Gonzalez, Vice Mayor Ortiz, and Mayor Pro Tem Fisher recently participated in a two-day program for elected officials. This program was sponsored by the Florida League of Cities University and was held April 23-24, 2021. The importance of completing this Institute should be known to key officials and our community.

Mayor Gonzalez, Vice Mayor Ortiz, and Mayor Pro Tem Fisher will be presented with their certificates and thanked for their dedication and commitment to improving the quality of municipal government in Florida.

Department: City Manager

Presenter: Mike Steigerwald

Attachment(s):

1. Mayor Olga Gonzalez - Elected Municipal Officials II (IEMO II) April 23-24 2021
2. Vice Mayor Felix Ortiz - Elected Municipal Officials II (IEMO II) April 23-24 2021
3. Mayor Pro Tem Jim Fisher - Elected Municipal Officials (IEMO II) April 23 -24 2021



RECEIVED BY
MAY 12 2021
CITY MANAGER'S OFFICE

May 5, 2021

Mayor Olga Gonzalez
City of Kissimmee
101 Church St
Kissimmee, FL 34741-5054

The Honorable Mayor Olga Gonzalez,

On behalf of the Florida League of Cities, I am pleased to award this certificate to you for the completion of the Institute for Elected Municipal Officials II in Daytona Beach on April 23-24, 2021.

It is our sincere hope that you found the program and challenging and worthwhile. We encourage you take advantage of other training opportunities through FLC University and the Institute of Government. We also invite you to register for the next offering of Leadership Academy I, when registration. You can find dates and locations for other trainings at: www.floridaleagueofcities.com/university.

We strongly believe that your attendance at the Institute is indicative of your continued commitment to improving the quality of municipal government in Florida. If we may be of assistance in the future, please do not hesitate to call upon us.

Sincerely,

Lynn S. Tipton
Director, FLC University
Florida League of Cities

Enclosure



 FLC UNIVERSITY
IEMO II

Certificate of Completion

April 23-24, 2021 • Daytona Beach, FL

Presented to

The Honorable Olga Gonzalez

Mayor

City of Kissimmee



May 5, 2021

Commissioner Felix Ortiz
City of Kissimmee
101 Church St
Kissimmee, FL 34741-5054

The Honorable Commissioner Felix Ortiz,

On behalf of the Florida League of Cities, I am pleased to award this certificate to you for the completion of the Institute for Elected Municipal Officials II in Daytona Beach on April 23-24, 2021.

It is our sincere hope that you found the program and challenging and worthwhile. We encourage you take advantage of other training opportunities through FLC University and the Institute of Government. We also invite you to register for the next offering of Leadership Academy I, when registration. You can find dates and locations for other trainings at: www.floridaleagueofcities.com/university.

We strongly believe that your attendance at the Institute is indicative of your continued commitment to improving the quality of municipal government in Florida. If we may be of assistance in the future, please do not hesitate to call upon us.

Sincerely,

A handwritten signature in black ink that reads "Lynn S. Tipton".

Lynn S. Tipton
Director, FLC University
Florida League of Cities

Enclosure





IEMO II

Certificate of Completion

April 23-24, 2021 • Daytona Beach, FL

Presented to

The Honorable Felix Ortiz

Vice Mayor

The City of Kissimmee





RECEIVED BY

MAY 13 2021

CITY MANAGER'S OFFICE

May 5, 2021

Vice Mayor Jim Fisher
City of Kissimmee
101 Church St
Kissimmee, FL 34741-5054

The Honorable Vice Mayor Jim Fisher,

On behalf of the Florida League of Cities, I am pleased to award this certificate to you for the completion of the Institute for Elected Municipal Officials II in Daytona Beach on April 23-24, 2021.

It is our sincere hope that you found the program and challenging and worthwhile. We encourage you take advantage of other training opportunities through FLC University and the Institute of Government. We also invite you to register for the next offering of Leadership Academy I, when registration. You can find dates and locations for other trainings at: www.floridaleagueofcities.com/university.

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Sincerely,

A handwritten signature in black ink that reads "Lynn S. Tipton".

Lynn S. Tipton
Director, FLC University
Florida League of Cities

Enclosure



 FLC UNIVERSITY
IEMO II

Certificate of Completion

April 23-24, 2021 • Daytona Beach, FL

Presented to

The Honorable Jim Fisher

Mayor Pro Tem

The City of Kissimmee

ITEM 3.B

PRESENTATION OF RETIREMENT WATCH TO BILLY MIRANDA

Request

The presentation Billy Miranda's retirement watch. Billy is retiring from the City after 35 years of dedicated service as a Building Inspector 3.

Explanation

Billy Miranda has serviced the citizens of Kissimmee for 35 years. Known affectionately as Inspector Billy to contractors and citizens, Billy has inspected most of the construction built in the City in the last 35 years. Billy also reviewed building plans and performed damage assessments after hurricanes and tornados.

Inspector Billy was respected by contractors and home owners for being tough but fair. You could easily spot him at any job site with his trademark cowboy hard hat.

In 35 years, Inspector Billy performed over 100,000 inspections on all types of structures, during all phases of construction.

Inspector Billy was "fully" licensed in all aspects of the building trades, a level very few Building inspectors reach, especially today, making Inspector Billy impossible to replace. He literally knew everyone and could remember details on any building he inspected. He was truly a wealth of knowledge.

Inspector Billy's stories of "contractors gone wild", his time in the Seabees, scoring the latest "buy one, get one free" lunch deal or his role in the recovery of the 1998 Kissimmee Tornado were as legendary as his dedication to his trade, the City and the citizens of Kissimmee.

Billy, the people of the City of Kissimmee thank you for your hard work and dedication making Kissimmee a safe place to live and work.

Your City family and the people of Kissimmee, wish you the best in your retirement and sincerely thanks you for making a difference for 35 years.

Department: Development Services

Presenter: Craig Holland

Attachment(s):

None

ITEM 3.C
PROCLAMATION - JUNETEENTH DAY

Request

The request is for the City Commission to present a Proclamation in honor of "Juneteenth Day."

Explanation

N/A

Department: City Manager
Presenter: Mike Steigerwald

Attachment(s):

1. Proclamation-Juneteenth Day.2021

Proclamation

City of
Kissimmee
Florida

JUNETEENTH DAY

WHEREAS, Juneteenth, or Juneteenth Independence Day, commemorates the traditional observance of the end of slavery in the United States and is observed annually on June 19; and

WHEREAS, President Abraham Lincoln declared that, "in giving freedom to the slave, we assure freedom to the free – honorable alike in what we give, and what we preserve. We shall nobly save, or meanly lose, the last best hope of earth;" and

WHEREAS, on January 1, 1863, President Lincoln issued the Emancipation Proclamation, declaring that "all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free;" and

WHEREAS, President Lincoln correctly believed slavery to be in violation of the principles of the Declaration of Independence and that its abolition represented a "new birth of freedom" for the United States; and

WHEREAS, more than two years would pass before the news reached African Americans living in Texas, when on June 19, 1865, Union Major General Gordon Granger and his regiment arrived in Galveston and spread the word that slavery had been abolished; and

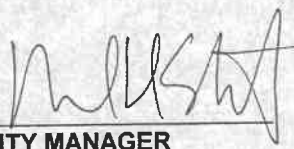
WHEREAS, the following year, the first official Juneteenth celebrations took place in Texas and have continued across the United States throughout the years; and

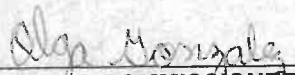
WHEREAS, emancipation in Florida was proclaimed in Tallahassee on May 20, 1865, and for this reason Floridians traditionally celebrate Emancipation Day on May 20; and

WHEREAS, Juneteenth is the oldest nationally celebrated commemoration of the ending of slavery, and is an important opportunity to honor the principles of the Declaration of Independence and celebrate the achievements and contributions African Americans have made, and continue to make, in Florida and across our Nation.

NOW, THEREFORE, we, the City Commission for the City of Kissimmee do hereby extend greetings and best wishes to all observing June 19, 2020 as "**Juneteenth DAY**" in the City of Kissimmee.

IN WITNESS, THEREOF, this is signed this 1st day of June 2021.


CITY MANAGER


MAYOR-COMMISSIONER



1943
Monument of Slavery



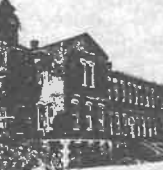
1920
Emancipation Castle



1882
Railroad Gauge



1897
Steamship



1884
Duval County Court House

ITEM 4.A

PUBLIC HEARING - SECOND AND FINAL READING - PROPOSED ORDINANCE #21-06 - ESTABLISHING A CITIZENS' POLICE REVIEW BOARD

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, TITLE II, ADMINISTRATION, CHAPTER 2-3, BOARDS AND COMMISSIONS, ESTABLISHING A CITIZENS' POLICE REVIEW BOARD; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE

Request

Approval of the Second and Final Reading of Proposed Ordinance 21-06.

Explanation

Although the City has received very little public requests concerning the creation of a Citizens' Review Board, the Kissimmee Police Department would like to remain on the forefront with regard to agency transparency. The creation of this Board will allow another avenue for public inspection of Police Department practices involving police interactions with citizens. The Board will have the ability to review and provide input on Agency protocol with regard to situations that require a Response to Resistance (Use of Force), Citizen Complaints, Internal Affairs, and other high liability areas of law enforcement. This Board also facilitates an opportunity for our community representatives to have direct input with the Chief of Police and Executive Staff on current issues to further foster those relationships and continue to build trust between the community and the police department.

Once the creation of the Board is approved by the Commission, the Chief of Police and City Manager shall implement a City Policy which will govern the board and will include Board membership requirements, administrative procedures, investigative review processes and reporting.

Recommendation

Staff recommends approval of the second reading of the ordinance creating the Citizens' Review Board.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter: Jeffrey Odell

Attachment(s):

1. Citizens' Police Review Board Ordinance. Final
2. Proof of Advertising - Proposed Ord 21-06 Establishing Citizens Police Review Board

PROPOSED ORDINANCE NO. 21-06
ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, TITLE II, ADMINISTRATION, CHAPTER 2-3, BOARDS AND COMMISSIONS, ESTABLISHING A CITIZENS' POLICE REVIEW BOARD; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KISSIMMEE, FLORIDA IN LAWFUL SESSION ASSEMBLED AS FOLLOWS:

SECTION 1. Chapter 2-3, of the Code of Ordinances of the City of Kissimmee, Florida, titled, Boards and Commissions, is hereby amended by adding a section titled "Citizens Police Review Board, which shall read as follows:

Citizens' Police Review Board

(A) *Composition and terms.*

(1) *Membership.* There is hereby a Citizens' Police Review Board (hereinafter referred to as "Board" in this Section). It shall consist of a minimum of five and a maximum of seven members depending upon community interest appointed by the City Manager and subject to confirmation by a majority vote of the City Commission.

a) *Residency, work, or property requirement.* Each member shall either reside, work, or own property in the City of Kissimmee.

b) *Diversity requirement.* To the extent possible, the membership of the Board shall reflect the racial, ethnic, and cultural diverseness of the City of Kissimmee.

c) *Candidacy for or election to office.* Members shall resign from the Board upon qualification as a candidate for elective office and shall not be a sitting elected official.

(2) *Terms.* Of the members first appointed, three shall be appointed for two years, and two for one year. Thereafter, all appointments to the Board shall be for two years, beginning on June 1 and ending on May 31 of the expiring term year. Members shall not serve more than three (3) consecutive two-year terms.

(3) *Vacancies.* Any vacancy in membership shall be filled for the unexpired term by the City Manager and subject to confirmation by a majority vote of the City Commission.

(4) *Compensation.* Members of the Board shall receive no salaries or fees for service on the Board but may receive actual and necessary expenses incurred in the performance of their duties of office.

(B) *Organization and meetings.*

(1) *Quorum.* A majority of the Board members shall constitute a quorum for the transaction of business. At least a majority of the quorum is required to take action on an agenda item.

(2) *Officers.* The Board shall elect a Chairperson and Vice Chairperson from amongst its members at the first regular meeting of the Board. The term of the Chairperson and Vice Chairperson shall be one year with eligibility for reelection. Subsequent elections shall be held at the first regular meeting after expiration of the officer's term. No member shall serve more than two consecutive years as Chairperson or Vice Chairperson. In absence of the Chairperson, the Vice Chairperson shall preside and have the same powers and duties.

(3) *Rules.* All actions of the Board shall be in accordance with applicable law to include but not limited to, the Florida Public Records Law, Florida Government in the Sunshine Law, and the Law Enforcement Offices Bill of Rights. The Board shall follow City Policy 903 titled "Citizens' Police Review Board." All meetings of the Board shall be open to the public and held after reasonable public notice. In the absence of a specific rule in this Section or City Policy 903, the current edition of *Roberts Rules of Order Newly Revised* shall be followed in conducting the official business of the Board. The Board shall prepare minutes for all Board meetings and keep a record of its resolutions, findings and recommendations, attendance and voting records of its members, all of which shall be public record. The Board shall meet monthly on a date to be determined by the City Manager's Office.

(C) *Powers and duties.*

(1) *Advisor to Chief of Police.* The Board shall be advisory to the Chief of Police who shall always remain in command of the Kissimmee Police Department.

(2) *Review of complaints and investigations.* The Board shall review citizen complaints, and departmental investigations conducted thereof, in the following instances:

- a) Use of deadly force;
- b) Alleged use of excessive force;
- c) Abuse of power;
- d) Any instances wherein police action results in death or serious bodily injury;
- e) Any complaint referred to the Board by any City Commissioner, the City Manager or the Chief of Police;
- f) Any citizen complaint that results in an internal investigation; and
- g) Any complaint dealing with an improper demeanor allegation.

(3) *Review of Police Department rules.* The Board shall review policies, procedures, rules, regulations, general, or special orders pertaining to the use of force and police conduct toward the citizenry.

(4) *Reports.* Following the review process as set forth in subsections (2) and (3) above, the Board shall submit a written report to the Chief of Police. The report shall state with specificity the grounds for such recommendation. The report shall be signed by the Chairperson and be reflective of the majority of the Board. Any written dissenting opinions or recommendations shall be signed and forwarded with the majority report.

Said written report may contain any of the following:

- a) A recommendation for approval.
- b) A recommendation for disapproval.
- c) A recommendation for modification or amendment.
- d) A recommendation for additional information, additional investigation, or re-investigation.

SECTION 2. Chapter 2-3 of the Code of Ordinances of the City of Kissimmee, titled, Boards and Commissions, is hereby amended to read as follows:

For purposes of changes to the text of the Code of Ordinances as set forth below, underlined words indicate additions to existing text, and ~~stricken~~ words include deletions from existing text.

Section 2-3-3 City Attorney as Legal Advisor; ~~Appeals from Opinions of Attorney.~~

The City Attorney or his or her designee is hereby designated as the legal advisor to all boards and commissions of the city, except for the Code Enforcement Board-Citizens' Police Review Board. and All legal opinions given by the City Attorney-legal advisor of the board or commission shall be accepted and followed by the board to or for which the opinion is given.

SECTION 3. All Ordinances in conflict herewith are hereby repealed.

SECTION 4. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 5. The City Attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the City Clerk.

SECTION 6. This Ordinance shall take effect immediately upon its passage.

Commissioner _____ moved the passage and adoption of the above and foregoing Ordinance. Motion was seconded by Commissioner _____ and upon roll call on the motion the vote was as follows:

AYES:

NAYS:

Said motion having been duly carried, thereupon, _____, declared said Ordinance duly passed and adopted this _____ day of _____, 2021.

Olga Gonzalez, Mayor-Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legality:

Olga Sanchez de Fuentes, City Attorney

OSCEOLA NEWS-GAZETTE

STATE OF FLORIDA
COUNTY OF OSCEOLA

Before me, the undersigned authority,
personally appeared Pamela Bikowicz,
who on oath says that she is the
Business Manager of the Osceola News-Gazette,
a twice-weekly newspaper published
at Kissimmee, in Osceola County, Florida;
that the attached copy of the advertisement
was published in the regular and entire
edition of said newspaper in
the following issues:

May 13, 2021.

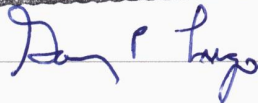
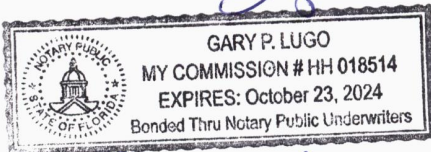
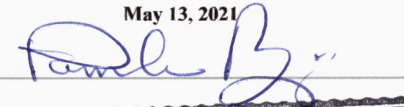
Affiant further says that the
Osceola News-Gazette is a newspaper
published in Kissimmee, in said
Osceola County, Florida, and that the said
newspaper has heretofore been
continuously published in said
Osceola County, Florida, each week
and has been entered as periodicals
postage matter at the post office
in Kissimmee, in said Osceola County, Florida,
for a period of one year preceding
the first publication of the attached copy of
advertisement; and affiant further says that
he has neither paid nor promised
any person, firm or corporation any discount,
rebate, commission or refund for the
purpose of securing this advertisement for
publication in the said newspaper.

Sworn and subscribed before

me by Pamela Bikowicz, who is

personally known to me, this

May 13, 2021



NOTICE OF PUBLIC HEARING AND SECOND READING

The City Commission of the City of Kissimmee, Florida will meet on **Tuesday, May 18, 2021 at 6:00 p.m.** in the City Commission Chambers, Municipal Administration Building, 101 Church Street, Kissimmee, Florida, to hear the **FIRST READING** and will meet on **Tuesday, June 1, 2021 at 6:00 p.m.** to hear the **SECOND AND FINAL READING** and consider the passage of the proposed ordinance as set forth below. The proposed Ordinance may be inspected in the Office of the City Clerk at the Municipal Administration Building, 101 Church Street, Kissimmee, Florida. All interested parties may appear and be heard on the above dates. For instructions to participate remotely, visit the City website at www.kissimmeere.sponds.com/publicmeetings.

PROPOSED ORDINANCE # 21-06

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, TITLE II, ADMINISTRATION, CHAPTER 2-3, BOARDS AND COMMISSIONS, ESTABLISHING A CITIZENS' POLICE REVIEW BOARD; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

CITY COMMISSION
KISSIMMEE, FLORIDA

IN ACCORDANCE WITH FLORIDA STATUTE 286.0105: ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

IN ACCORDANCE WITH FLORIDA STATUTE 286.26, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDING SHOULD CONTACT THE OFFICE OF THE CITY CLERK 407-518-2308 AT 101 CHURCH STREET, KISSIMMEE, FL 34741, PRIOR TO THE MEETING (FS 286.26).
May 13, 2021



Make remittance to: Osceola News-Gazette
22 W. Monument Ave., Suite 5
Kissimmee, FL 34741
Phone: (407) 846-7600 Fax: (321) 402-2946
Email: legalads@osceolanewsgazette.com
You can also view your Legal Advertising on
www.AroundOsceola.com or
www.FloridaPublicNotices.com
Ad#33981

ITEM 4.B

PUBLIC HEARING - FIRST READING - PROPOSED ORDINANCE #21-07 - ADOPTING AND ENACTING A NEW CITY CODE OF ORDINANCES

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE CITY OF KISSIMMEE, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

Request

Approval of the First Reading of Proposed Ordinance 21-07 for Recodification of the City's Code of Ordinances.

Explanation

Under the tenure of the former City Attorney a decision was made to change vendors for the codification of the City code from American Legal Publishing to Municode. This process was a multi-year project that included review of existing City Code and ordinances for conflicts with state law, case law and constitutional principals.

Municode attorneys provided the conflicts and possible resolutions in a legal manuscript which was discussed with the City Attorney. Following implementation of the agreed upon solutions, proofs of the new code were sent and reviewed by staff. Once the proofs were approved, the new Code was indexed and copies were printed. The new code will be posted on-line, and hard copies distributed to Departments upon the adoption of this ordinance after second reading.

Municode shall continue to maintain the code as new legislation is enacted by the City Commission.

Recommendation

Staff recommends approval of the first reading of Proposed Ordinance 21-07.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter: Olga Sanchez De Fuentes

Attachment(s):

1. Proposed Ordinance No. 21-07 - Adoption and Enactment of New City Code
2. Prop Ord 21-07 Adopting Enacting New City Code (Gazette 5-27)

PROPOSED ORDINANCE NO. 21-07
ORDINANCE NO. _____

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE CITY OF KISSIMMEE, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KISSIMMEE, FLORIDA IN LAWFUL SESSION ASSEMBLED AS FOLLOWS:

SECTION 1. The Code entitled “Code of Ordinance, City of Kissimmee, Florida” published by Municipal Code Corporation, consisting of Chapters 1 through 48, each inclusive, is adopted.

SECTION 2. All ordinances of a general and permanent nature enacted on or before August 4, 2020, and not included in the Code or recognized and continued in force by reference therein, are repealed.

SECTION 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

SECTION 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a fine not exceeding \$500.00 or a term of imprisonment not exceeding sixty (60) days or both a fine and a term of imprisonment. Each act of violation and each day upon which any such violation shall continue or occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication, code enforcement and revocation of licenses or permits.

SECTION 5. Additions or amendments to the Code when passed in such form as to indicate the intention of the city to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

SECTION 6. Ordinances adopted after August 4, 2020, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

Commissioner _____ moved the passage and adoption of the above and foregoing Ordinance. Motion was seconded by Commissioner _____ and upon roll call on the motion the vote was as follows:

AYES:

NAYS:

Said motion having been duly carried, thereupon, _____, declared said Ordinance duly passed and adopted this _____ day of _____, 2021.

Olga Gonzalez, Mayor-Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legality:

City Attorney

NOTICE OF PUBLIC HEARING
AND SECOND READING

The City Commission of the City of Kissimmee, Florida will meet on **Tuesday, June 1, 2021 at 6:00 p.m.** in the City Commission Chambers, Municipal Administration Building, 101 Church Street, Kissimmee, Florida, to hear the **FIRST READING** and will meet on **Tuesday, June 15, 2021 at 6:00 p.m.** to hear the **SECOND AND FINAL READING** and consider the passage of the proposed ordinance as set forth below. The proposed Ordinance may be inspected in the Office of the City Clerk at the Municipal Administration Building, 101 Church Street, Kissimmee, Florida. All interested parties may appear and be heard on the above dates.

PROPOSED ORDINANCE #21-07

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE CITY OF KISSIMMEE, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE

CITY COMMISSION
KISSIMMEE, FLORIDA

IN ACCORDANCE WITH FLORIDA STATUTE 286.0105: ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

IN ACCORDANCE WITH FLORIDA STATUTE 286.26, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDING SHOULD CONTACT THE OFFICE OF THE CITY CLERK 407-518-2308 AT 101 CHURCH STREET, KISSIMMEE, FL 34741, PRIOR TO THE MEETING (FS 286.26).

ITEM 7.A
COMMISSION MINUTES APPROVAL

Request

Request Commission approval of the April 27, 2021 Commission Workshop Minutes.

Explanation

Minutes of the Commission Workshop held April 27, 2021 are attached for approval.

Recommendation

Staff recommends Commission approval.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter:

Attachment(s):

1. Commission Workshop Minutes - April 27 2021



MINUTES OF THE WORKSHOP SESSION OF THE CITY COMMISSION HELD TUESDAY, APRIL 27, 2021, AT 2:00 PM AT THE CITY OF KISSIMMEE, CITY HALL COMMISSION CHAMBERS LOCATED AT 101 CHURCH STREET, KISSIMMEE, FLORIDA

1. MEETING CALLED TO ORDER

Members Present: Mayor Olga Gonzalez, Commissioners Olga Castano, Felix Ortiz, Carlos Alvarez, Jim Fisher

Staff Present: City Manager Mike Steigerwald, City Attorney Olga Sanchez de Fuentes, Deputy City Manager Desiree Matthews, Assistant City Manager Austin Blake, Records Specialist Eugenio Morales

Members Absent: None.

Mayor Gonzalez called the meeting to order at 2:00 PM.

2. WORKSHOP DISCUSSION

2.A SOCIAL SERVICES PROCESS REVIEW

Commission direction on the process and potential changes.

City Manager Steigerwald reviewed the current method of selecting agencies to receive funding during the annual process and mentioned staff is aware the Commission desires to change the process to obtain better results.

Deputy City Manager Matthews stated she met with each Commissioner individually about proposed changes and thanked them for their ideas and contributions.

Mayor Gonzalez opened the discussion to the Commission. The Commission engaged in a conversation where they each voiced their opinions on how the process should work.

Commissioner Fisher stated the current invitation process is satisfactory and would like to keep it in use.

Mayor Gonzalez expressed interest in inviting more agencies but would like more research on the agencies already receiving funding.

Commissioner Alvarez favors an open process, has a desire to hold all agencies accountable, and receive feedback from individuals who receive services.

Commission Ortiz agrees to keep the invitation process in place but mentioned other agencies should be considered as well. He also stated the Commission should remain the final decision maker when it comes to allocating funding. He also mentioned that Commissioners should not serve on non-profits boards.

City Attorney Sanchez de Fuentes clarified that it is not a violation of law for a Commissioner to sit on a board that receives funding from the City unless they are the President or Owner because as a Commissioner you cannot do business with your own agency. It is an appearance issue to the public but not a violation of the law. This does not stop you from volunteering for non-profits.

Deputy City Manager Matthews engaged the Commission in a discussion about the monitoring and auditing of agency programs, client files, and funding allocation use. She is seeking direction from the Commission on the amount of data they would like to see from each agency.

Commissioner Alvarez recommended a quality assurance program through the internet and assign numbers instead of personal information to help protect client's privacy.

City Manager Steigerwald recommend that each client be required to take the survey to capture the true client satisfaction rating.

Commissioner Alvarez and Commissioner Fisher agreed they would like to see performance monitoring to occur quarterly.

Deputy City Manager Matthews asked the Commission for direction on potentially limiting the number of years an organization can receive funding, noting there is currently no limit.

Commissioner Alvarez would like to prioritize funding allocation by performance and community need, not based on length of time.

Commissioner Fisher finds term limits are not necessary since the Commission decides annually whether funding is allocated or not.

Commissioner Ortiz wants term limits for funding, but not eliminate those agencies who are performing well. He also expressed a potential need to increase funding or place an additional \$25,000 in the budget annually.

Commission consensus was to keep the City Commission as the decision-maker for social services funding, use an average from the Commission tallied lists to start the negotiations on funding allocation, and use an invitation process to apply for funding.

Deputy City Manager Matthews asked for Commission consensus regarding the allocation of funding for the 2020-21 fiscal year since those monies have not been awarded due to the pandemic.

After several questions from Commissioners, staff clarified there is no time limit for the funds to be used as they are part of the City's General Fund.

City Manager Steigerwald mentioned an example of how the funding could be used to fill gaps in needs would be a unique solution to assist the residents at the Caribbean Apartment Complex who are in danger of having their water shut off.

Commissioner Fisher mentioned this item was brought up at the last Toho Water Board Meeting and they all agreed individual meters should be installed.

Commissioner Ortiz agreed with the City Manager's example and wants to hold the funding for other possible uses.

Commission consensus is to hold the funds for the 2020-21 fiscal year, but also start working on the 2021-22 Social Service Funding process.

Deputy City Manager reminded the Commission if they are aware of any agency that should receive an invitation or be considered for funding to provide that information to her before the invitations are sent.

2.B DISCUSSION ON SELECTION COMMITTEE FOR REVIEW OF THE EMERGENCY SHELTER/BRIDGE-HOUSING AND HOMELESS SERVICES RFP

Staff is seeking direction in the creation of a review committee as a means to present the City Commission recommendations on the Emergency Shelter/Bridge-Housing and Homeless Services proposals.

City Manager Steigerwald reviewed the current proposal to establish a committee of five (5) individuals, one (1) appointed by each Commissioner and then an additional two (2) to four (4) members appointed collectively as the Commission sees as appropriate. The City Manager recommended to the Commission that the Committee be seated prior to the RFP being advertised.

Following a discussion, the Commission consensus was for a seven (7) member board made up of one (1) appointment from each Commissioner and two (2) at-large as a collective vote of the Commission.

2.C DISCUSSION ON ENFORCEMENT OF THE PROPOSED PEDESTRIAN SAFETY ORDINANCE

Staff will provide an overview of how the Kissimmee Police Department anticipates enforcing the proposed pedestrian safety ordinance.

City Manager Steigerwald stated this discussion is in response to the concerns raised by Commissioner Alvarez regarding the implementation of the pedestrian safety ordinance. City Manager Steigerwald introduced Police Chief Jeff O'Dell and Attorney Curtis McGehee, the Police legal advisor.

Chief O'Dell reviewed the various strategies over the last several years that have been unsuccessful in addressing the issue. The updated ordinance is targeted towards professional, aggressive panhandlers who use deceitful methods to obtain money from drivers.

The Commission then engaged in a question and answer session with Chief O'Dell and City staff about the ordinance and proposed changes. The Commission also expressed their opinions, likes, and any dislikes of the proposed changes.

There was no consensus or request to change the proposed ordinance.

SCHOOL RESOURCE PROGRAM UPDATE

City Manager Steigerwald requested the Commission allow the Police Chief to provide an update on the discussions on the School Resource Officers (SRO) programs. A preliminary discussion was being held with local law enforcement and the School District concerning a guardian program for security at Charter Schools.

Chief O'Dell reported that when the SRO Program was under consideration after the Marjory Stoneman Douglas incident he was not in favor of a guardian program, but he has changed his thought process after a couple of years of living through it and its impact to staffing issues. Chief O'Dell then explained the staffing model, the cost of reimbursement from the School District, and how these mandates require them to pull officers from specialty units to cover absences.

Chief O'Dell stated he initiated a conversation with St. Cloud and Osceola County law

enforcement to consider a guardian program. Several counties in our area have been using the program with great success and established history. He would like to focus our SRO's on traditional schools and allow the guardian program at charter schools.

3. ADJOURNMENT

There being no further business to come before the Commission, Mayor Gonzalez adjourned the meeting at 3:23 p.m.

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

ITEM 7.B**AWARD CITY SIGNATURE FESTIVAL/EVENTS PERFORMANCE AND PRODUCTION SERVICES AGREEMENT****Request**

Approval and execution of the City Signature Festival/Events Performance and Production Services Agreement with aXis Productions & Events for services described in RFP 2021-003.

Explanation

Starting in 2017, the Parks and Recreation Department packaged all of the City's signature events in the entertainment and production bid together in an effort to streamline festival entertainment logistics as well as consistently provide professional performers.

A formal bid was advertised on April 11, 2021, with the Orlando Sentinel, Demand Star, and Vendor Link via RFP 2021-003. This bid was advertised to contract the Performance and Production Services for the City's events in the 2021 Festival Series (Festival of Lights, Martin Luther King Unity Celebration, Sunshine Festival, KowTown Festival, Night of Music, PrideFest, Monumental 4th of July and Fandom Kissimmee), 2022 Festival Series and 2023 Festival Series. This request was for a proposal of all inclusive airfare, ground transportation, artists' fees and production costs including stage, power, sound, lighting, backline musical equipment and technicians.

Three bids were submitted and staff recommends that aXis Productions & Events be chosen as the vendor. The aXis bid for the entire 2021 festival series is in the amount of \$112,500 which will also be honored for the 2022 and 2023 series. The aXis Productions bid met the budget, included suggested artists and outlined the production details including equipment and staffing per event. Dream Wedding & Events was the lowest bid but did not meet all of the bid requirements as they did not include equipment specifications, potential artists and or any information on their liability insurance. PK Productions submitted a bid as well; however, their costs were the highest of the three bidders.

aXis Productions & Events has significant experience in concert and event production including production of the 2018, 2019 and 2020 Signature Events/Festivals Series for the City of Kissimmee and meets all qualifications. The aXis bid also offers additional marketing and promotion opportunities via other events they manage which will greatly increase awareness.

The term for this agreement is from the date of execution and will be effective for three years (to include 2021, 2022 and 2023) with the option to renew for an additional two years (2024 and 2025), if mutually agreed. Staff recommends allowing the City Manager to sign all contracts and subsequent renewals.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00150663-503434	N/A	Decrease	\$121,200	\$112,500

Financial Summary:

Adequate funds are available in the General Fund budget to cover the cost of these services.

Recommendation

Staff recommends approval and execution of the City Signature Festival/Events 2021 Performance and Production Services Agreement with aXis Productions & Events for services described in RFP 2021-003.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. RFP2021-003 Festival Performance and Production Services full packet
2. RFP2021-003 Festival Performance and Production Services Bid Abstract
3. aXisPro Events Inc
4. aXis Agreement

*** REQUEST FOR PROPOSAL ***

- I. The CITY OF KISSIMMEE is seeking SEALED PROPOSALS on the following:
Request for Proposal Number **RFP2021-003 Festival Performance and Production Services**
- II. All proposals must be submitted in a SEALED envelope and plainly marked with the proposal number on the exterior of the proposal envelope, one (1) original, one (1) copy and (1) electronic copy on CD or Flash Drive.
- III. To be considered proposals MUST be delivered OR mailed to:

**City of Kissimmee
Finance Department 4th Floor
Attn: Purchasing Division
101 Church Street
Kissimmee, FL 34741**

And time stamped on or before 2:00 PM, April 30, 2021.

- IV. All proposals shall be opened and read publicly in the City of Kissimmee Finance Department 4th Floor, Allendale Conference Room, 101 Church Street, Kissimmee, Florida at 2:30 PM, April 30, 2021.
- V. All proposals must be according to specifications and conditions, and on the forms provided herein.
- VI. The Proposal's name and address shall be clearly shown on the exterior of the Sealed Envelope.
- VII. The City of Kissimmee reserves the right to accept and/or reject any or all proposals, with or without cause, to waive technicalities or to accept the proposal which, in its judgment, best serves the interest of the City of Kissimmee. Persons are advised that, if they decide to appeal any decision made concerning the award of this proposal, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be made. Proposal results other than the apparent low offer will not be provided in response to telephone inquiries. Proposals desiring a copy of the Abstract of Offers should include such request with a self addressed stamped envelope in their proposal.

Brandon Durango
Procurement Manager

1.1 PROPOSAL PREPARATION

Submission of a proposal in response to this solicitation shall evidence the proposers acknowledgement that he is cognizant of all the conditions and specifications contained herein and that any offer made is in accordance with the contained specifications and conditions unless, specifically identified and explained as exceptions on the proposers schedule. Each proposer is responsible for the completeness and accuracy of their proposal. Proposals must show manual signatures by an individual authorized to offer such obligations, and shall contain evidence of that person's authority to make such offers. Unsigned proposals will be rejected. Stamped or otherwise reproduced signatures are not acceptable. Erasures or other changes must be initialed by the person signing the proposal. Proposers should include all descriptive literature specifications, or catalogs or cuts necessary to specifically identify and describe the item(s) being offered. Failure to do so may result in the proposal being declared non-responsive.

1.2 SUBMISSION OF PROPOSALS

All bids shall be submitted in a sealed envelope on the forms included with this solicitation with the bidders name and address and bid number plainly marked on the exterior of the envelope. Timely submission of a bid is important. Official receipt is acknowledged using an atomic date/time stamp interfaced with the U.S. Government's National Institute of Standards and Technology (NIST) which is the official time keeper for the U.S. Facsimile or telegraphed bids will not be accepted.

1.3 PRICING

The unit price for each item being proposed will be shown on the Proposal Schedule and will include all costs for or associated with the item. A total for each line item will be entered on the Proposal Schedule. In case of a discrepancy between unit price and extended price, the unit price shown shall prevail.

1.4 DELIVERY

Exact delivery times frames or dates must be shown on the proposal, such as, "(x) days after receipt of order". Number of days for delivery shall be presumed to include all weekends or holidays in the period. All offers shall be FOB Destination and shall include inside delivery to the delivery point specified.

1.5 DEFAULT

Should the successful proposer for any award made as a result of this solicitation fail to deliver a product in accordance with the specifications contained herein and within the time frame promised, the City of Kissimmee reserves the right to cancel the contract for default and to award this contract to the next most qualified offer. The proposer in default may be held liable for any added cost to the City of Kissimmee incurred as a result of such action.

1.6 LATE PROPOSALS AND WITHDRAWAL OF OFFERS

No proposal will be accepted after the published deadline for accepting proposals in response to this solicitation. Proposals may be withdrawn at any time prior to the official time set for the proposal opening. No modification or withdrawal of any offer received will be allowed after the time and date set for the official proposal opening.

1.7 DISCOUNTS

Proposers may offer cash discounts for prompt payment, however, any such discount offered will not be considered as a factor in determining the lowest proposals offered. Any other discounts should be reflected in the unit price proposal.

1.8 PROPOSAL EVALUATION AND AWARD

All proposals received will be evaluated based on one or more of the following factor: price; quality of product offered; compliance with specifications; delivery; reputation of the proposal; previous contract' proximity of parts and service; compatibility with similar, existing products; and any other factors detailed in the specifications. Award will be made to the lowest responsive and responsible proposer complying with the provisions of the invitation to Proposal, provided that such award is in the best interests of the City of Kissimmee.

The City of Kissimmee reserves the right to accept and /or reject any or all proposals in whole or in part with or without cause; to waive technicalities; to make multiple awards on a line item basis; and accept the proposal which in its judgment, best services the interest of the City of Kissimmee. Proposers are cautioned that no communication with any City of Kissimmee employee involved in the evaluation process is authorized during the proposal evaluation process unless such communication is originated by the City of Kissimmee for the purpose of clarifying the proposal. Questions regarding the status of any proposal should be directed to the Purchasing Agent. Proposal awards will be posted in the Purchasing Office after Commission Approval. Vendors are responsible for following up on the status of any proposal. The City of Kissimmee will only notify successful vendor(s).

1.9 BILLING AND PAYMENT

The City of Kissimmee will pay all proper invoices submitted for supplies and/or services within 30 calendar days. To be considered a proper invoice it must be submitted in 2 copies to the City of Kissimmee Accounting Department, 101 Church Street Kissimmee, FL 34741, show the Vendor FEID Number, the purchase order number and be based on proper delivery installation or provision of goods or services to and accepted by The City of Kissimmee. The payment cycle will not start until all the above requirements are met.

1.10 SAMPLES

The City of Kissimmee may, at its discretion, require submission of samples for inspection and testing. When specifications require such submissions, all costs for such samples, including postage, will be the responsibility of the proposer. Samples that are not consumed in the evaluation process or determined necessary for comparison with future deliveries may be returned at the proposers request and at the proposers' expense. The City of Kissimmee will not be held liable for any sample provided.

1.11 SILENCE OF SPECIFICATIONS

The silence of these specifications regarding exact details of any product or service required shall be regarded as meaning that only the best commercial practices will prevail and that only materials of first quality and correct type, size, or design are to be used. All workmanship will be first quality. Unless otherwise specified all products provided as a result of this solicitation will be new, unused, the latest model in production, and in compliance with the enclosed specifications.

1.12 USE OF BRAND NAMES

Unless otherwise stated, the use of brand names in specifications is not intended to restrict any offer. Brand names are only used to illustrate the type and quality of product acceptable for this solicitation and to provide a simplified specification. Vendors should feel free to propose any equal item provided that all exceptions to these specifications are clearly identified and explained and definitive specifications for the item being proposed including product literature, cuts or samples are included with the proposal. The City of Kissimmee reserves the sole right of final determination of product equivalency.

1.13 WARRANTY

All warranties for products or services provided under any contract resulting from this solicitation will meet or exceed that warranty offered the providers most favored customer and in no instance will be less than unlimited twelve month non-prorated warranty. If individual specifications contained herein require a warranty in conflict with this provision, the warranty provisions of the individual specification shall prevail.

1.14 ADDENDUMS

In the event modifying addenda to the basic solicitation are issued the City of Kissimmee will attempt to provide such addenda to all vendors who have been furnished proposal packages. However it shall be the proposer's responsibility to verify with the Purchasing Office before the proposal is submitted whether or not addenda have been issued and to obtain such addenda for submission with the proposal. Receipt of any addenda issued must be acknowledged on the proposal schedule.

1.15 PROPOSERS CERTIFICATION

By signature on this proposal, proposer certifies or in the case of a joint proposal each party certifies that:

- A. He has not given, offered nor intends to give at any time economic opportunity, future employment, favor or gratuity in any kind to any employee of the City of Kissimmee in connection with this proposal.
- B. That the proposer has not divulged or discussed his offer with other proposers.
- C. Prices offered have been determined independently without collusion with other proposers for the purpose of restricting competition.
- D. No attempt has been made to induce any potential proposer to submit or decline to submit an offer in response to this solicitation.

1.16 "NO PROPOSAL" RESPONSE

Vendors electing to not submit proposals in response to this solicitation should complete the attached "Notice to Proposers" form. Failure to return the form may result in your omission from future proposal lists.

1.17 CFPC

The City of Kissimmee participates in a Central Florida Purchasing Cooperative (CFPC). All bidders awarded contracts from this bid are encouraged to permit other active members of CFPC to participate in the contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs.

1.18 COMPLIANCE WITH THE JESSICA LUNSFORD ACT

If applicable, compliance with the Jessica Lunsford Act will be required by Contractor.

1.19 CONE OF SILENCE – The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award. The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time vendors, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any vendor who attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence –

- Written communications directed to the Procurement Officer;
- All communications occurring at pre-bid meetings;
- Oral presentations before publicly noticed committee meetings;
- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

1.20 PROTEST

Any protest must be made within three (3) days following posting of the proposal award. Protest procedures are available from the City of Kissimmee Finance Department 4th Floor Attn: Purchasing Division, 101 Church Street, Kissimmee, FL 34741.

Notice of decision or intended decision concerning a bid solicitation or award may be given by posting the bid tabulation or recommended award at the location where the bids were opened or posted electronically on the City's website www.kissimmee.gov. Failure to file a protest within the deadlines prescribed shall constitute a waiver of protest proceedings.

1.21 PUBLIC RECORDS

Under chapter 119, Florida Statutes, all responses to this solicitation shall be considered public record subject to distribution pursuant to the request for records by any interested party.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this Contract, contact the Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.gov, and 101 Church Street, Kissimmee, Florida 34741.

The Contractor shall keep and maintain public records required by the City to perform the service.

2.0 SPECIAL PROVISIONS:

2.1 PUBLIC ENTITY CRIMES: "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 proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals 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 287.133, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list".

2.2 INDEMNITY: The Contractor will indemnify and hold harmless the City of Kissimmee from and against all claims, damage loss, and expenses arising out of, or resulting from, the performance of their operations under this contract.

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the service.

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- All employees on the job and all other persons who may be affected thereby.
- All the work, materials, and equipment, whether in storage on or off the site, under the care, custody, or control of the Contractor; and
- Other property at the site including trees, shrubs, lawns, walks, pavements, and roadways.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful order of any public authority bearing on the safety of persons or property or their protection from damage, injury, or loss.

In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss.

2.3 **CLARIFICATION OF REQUIREMENTS:** Questions regarding clarification or interpretation of the technical specifications and non-technical nature regarding the general or special conditions of this solicitation should be addressed in writing no later than by **Monday, April 19, 2021** to the Purchasing Coordinator – Debbie Luke, City of Kissimmee Finance Department 4th Floor Attn: Purchasing Division, 101 Church Street, Kissimmee FL 34741, ph# 407-518-2214, email debbie.luke@kissimmee.gov.

However, unless modified by a written addendum issued by the Purchasing Agent no later than seven (7) days prior to the proposal opening date the specifications and conditions contained herein stand as stated. Verbal communications are neither authoritative or binding. Any verbal interpretation in conflict with these specifications as written should immediately be directed in writing to the Purchasing Agent for the City of Kissimmee. Any interpretation provided to any vendor in response to inquiries regarding this solicitation which may affect the outcome of this proposal will be furnished in writing to all vendors who have received proposal packages

2.4 No minor children are permitted to accompany proposers during pre-proposal conferences, proposal opening or site tour.

2.5 This bid contains pages 1 – 23. Please contact the Purchasing Office at 407-518-2214 if you are missing any pages.

2.6 A link to this website is available through the City's Web Page <http://www.kissimmee.gov>, under the Finance Department, Purchasing. Notice of Award, Proposals currently available, and Tabulation sheets are available Online. Proposers, who do not have Internet access, may request a copy of the tabulation by enclosing a stamped, self-addressed envelope with the Proposal response.

2.7 **The City of Kissimmee has a Local Vendor Preference Policy:** When written bids, responses to request for proposals or quotations are received by the City as part of the competitive sealed bid process, and the lowest responsible price is offered by an individual or entity that is not an Osceola County person, firm and/or corporation and the next lowest responsible bidder is an Osceola County person, firm and/or corporation, the Osceola County individual or entity will be given an opportunity to match the lowest price offered.

If an offer is made to match the lowest price and the Osceola County individual or entity is otherwise fully qualified and meets all City requirements, the bid shall be awarded to the Osceola County individual or entity at the lowest price. In order to receive the local vendor preference provided herein, the Osceola County individual or entity that qualifies as the next lowest price bidder hereunder, must unconditionally agree in writing to

match the lowest price bid and deliver to the City designated representative by 8:30 a.m. on the third regular business day after notification of opportunity to match bid. Eligibility form is Attachment A.

2.8 FEES AND LICENSURE COST: This bid requires the following fees/licensure; proof of a valid Business Tax Receipt from the jurisdiction of the bidder's place of business.

2.9 The selected vendor will provide a certificate of insurance for minimum of \$1,000,000 General Liability Insurance and \$1,000,000 umbrella or \$2,000,000 per occurrence General Liability naming the City of Kissimmee "additional insured". Auto liability insurance will be required in the amount of the general liability requirement if automobiles are used as part of the event. Workers compensation will be required to, "Workers Compensation will be required of vendor must carry it, as required by Florida State Statute. The City requires a waiver of subrogation in favor of the City of Kissimmee on all relevant coverages.

2.10 REFERENCES: All submittals must include with the bid a listing of references. This listing should include a contact's name and phone number. At least three (3) of the references should be similar in size and scope of services to the requirements of this bid.

2.11 FEES AND LICENSURE COST: This bid requires the following fees/licensure; proof of a valid Business Tax Receipt from the jurisdiction of the bidder's place of business.

2.12 TERMS: The term of this Agreement shall commence at the date the last party executes the Agreement and will be in effect for three(3) years with the option to renew for an additional two (2) years if mutually agreed upon in writing by the Parties.

2.13 SAMPLE CONTRACT: A sample contract is included in this proposal, on pages 19-23.

3.0 SCOPE OF SERVICES: City of Kissimmee is requesting Performances and Production Services for the 2021 Festivals. This request for proposal will be all inclusive of any airfare, ground transportation, and artists' fees, production costs, including power, sound, lighting, techs and backline.

3.1 SCHEDULE EVENTS:

**A. Monumental Fourth of July
Sunday, July 4, 2021
Kissimmee Lakefront Park Veterans Lawn**

Annual July 4th Celebration features live concert on the Veterans Lawn, food and beverage concessions and food trucks, and the Zambelli Fireworks show to close out the night! Veterans Lawn main stage: Performances needed from 600PM – 9:00PM: DJ at 6PM, Band 1 at 6:30PM, DJ at 7:30PM, Band 2 at 7:45PM, DJ at 8:45PM – 9:00PM 2 local or regional performers/bands, and one host/DJ. Performance genres to include at least two of the following : R&B, Soul/Funk, Latin Pop/Salsa, Rock/Alt Rock, Country/Bluegrass, Ska/Reggae, Pop. The expectation is that the Monumental 4th of July performers will have ability to perform cover renditions of Top 40 songs, past and present. Performances will use family friendly lyrics and choreography.

If needed, the Production team is responsible for hotel selection, room bookings and transportation to/from the airport, as well as Lakefront Park. The City will provide access to dressing rooms, maximum of 7ppl, for each performing group.

- **STAGE:** minimum of 32x24 stage with 15' roof and black back drop at the Veterans Lawn. Stage and roof will be sufficient to protect artists and equipment from sun and rain. City accepts no responsibility for damage to equipment due to weather or exposure. All staging, trussing and tenting must have appropriate safety certifications for wind capacity, weight load and flame resistance.
- **SOUND PRODUCTION:** Responsible for all production needs, including providing power, backline, audio and sound techs, lighting and light techs, screens and video techs, stagehands. Video production should include two 8x12 video screens, to be staged on the Veterans Lawn. Responsible for procurement and installation of sound booth.
- **TALENT:** Responsible for artist recruitment. Responsible for onsite and stage management of talent. Onsite management inclusive of any transportation needs to and from Kissimmee Lakefront Park. Will provide Performer Rider for City review prior to execution of performer contract. Production team responsible for all artist hospitality.
- Will seek prior approval for any guests invited on stage and/or giveaways during the performance.

B. Fandom Kissimmee

Saturday, September 18, 2021

Kissimmee Civic Center

3rd annual event will include exhibitors, panel discussions, costume contests, demonstrations, games and concessions. The event will need an emcee and DJ from 11AM-6PM, music will have family friendly lyrics and the emcee will avoid profanity, references to drug use and derogatory language. The festival will use the existing Civic Center Arena stage. The vendor will provide theatrical lighting. Meals are not provided.

C. Festival of Lights

Saturday, December 11, 2021

Downtown Kissimmee

Annual holiday event, the night parade is held on downtown streets. The parade starts at 7PM and requires (1) stage for parade judges, at least 20x24 with LED lighting, roof, skirting, guard rails and backdrop and (4) announcer stations, with 2 speakers and 1 wireless microphone each. Set up begins at 4:30PM and strike at 9PM. COK will provide access to power for announcer stations and judges stage.

D. MLK Unity Celebration

Saturday, January 15, 2022

Kissimmee Lakefront Park Festival Lawn

6th annual celebration honoring the legacy of Dr. King and the ideals of equality, diversity and brotherhood. The parade starts at 10AM and requires (1) stage for parade judges, at least 20x24 with roof, skirting, guard rails and back drop and (2) announcer stations, with 2 speakers and 1 wireless microphone each. COK will provide access to power for announcer stations and judges stage. The performances at the festival would run 11AM-4PM. 2-3 performers with a host/DJ. Performances will use family friendly lyrics and choreography.

E. Sunshine Regional Chili Cook Off & Craft Beer Festival
Saturday, February 19, 2022
Kissimmee Lakefront Park Veterans Lawn

24th annual event, sanctioned by the International Chili Society, that serves as regional qualifier for state chili final competition. The performances would run 12PM-5PM. 2-3 performers with a host/DJ. Performances will use family friendly lyrics and choreography. The festival requires (1) stage for the performances, at least 20x24 with roof, skirting, guard rails and back drop. Meals are not provided.

F. Kowtown Festival
Saturday, March 19, 2022
Kissimmee Lakefront Park Festival Lawn

Festival to celebrate Kissimmee's 137th birthday. The performances would run 12PM-5PM. 2-3 performers with a host/DJ. Performances will use family friendly lyrics and choreography. The festival requires (1) stage for the performances, at least 20x24 with roof, skirting, guard rails and back drop. Meals are not provided.

G. Night of Music
Saturday, May 7, 2022
Kissimmee Civic Center

Hosted by the City of Kissimmee, the event has featured evening performances in the park by a 40-piece symphony orchestra and a soloist. For the last two years, the event has been relocated to the Kissimmee Civic Center. The City is interested in expanding performances to include student groups, string quartets, jazz bands or contemporary classical artists. The performances would run 7PM-9PM in the Civic Center Arena. COK will provide the stage, rehearsal space and dressing areas. Meals are not provided. In addition to audio, production would require lighting package for the stage and the performers.

H. PrideFest Kissimmee
Saturday, June 18, 2022
Kissimmee Civic Center

4th annual event to celebrate and welcome a diverse community during LGBTQ Pride Month. The performances would run 12PM-5PM. Vendor will provide 2-3 performers with a host/DJ and theatrical lighting. Performances will use family friendly lyrics and choreography. The festival will use the existing Kissimmee Civic Center stage and COK will provide modular extension staging as needed. Meals are not provided.

3.2 CONTRACTOR RESPONSIBILITIES: For all of the events, with the exception of the 2021 Festival of Lights Parade, the selected contractor will:

- Provide video of proposed performers for City review and approval. Festival line-ups will be finalized at least 4 weeks prior to the festival date.

- Provide credential count and will distribute credentials to artists, stage techs, management
- Co-promote festivals and performances on their website, social media and digital communications.
- Will comply with City sound maximums
- Will provide engineering plans for mobile stages
- Will Comply with Kissimmee Police Department security and Kissimmee Fire Department safety standards
- Will comply with City of Kissimmee's Communications and Public Affairs standards.

3.3 CITY REQUIREMENTS:

- The City retains the right to review and approve any banners, signs or displays on or near stage.
- The City retains the right to review and approve event sponsors.
- The City requires stage access for City photographer. Will need permissions to use artists' names and likenesses in promotion of the event.

4.0 SELECTION:

4.1 EVALUATION CRITERIA

Evaluation of proposals will be conducted by an evaluation committee. The committee's goal will be to identify the proposal which will overall best meet the needs of City of Kissimmee as determined from the proposals received and subsequent investigation by the City. General factors to be applied will be:

COMPANY HISTORY/EXPERIENCE (30 points)

- How long has the organization existed? (Minimum of 3 years)
- Has the organization produced other events? Has the organization produced any events similar to the City's events? Provide examples of least three public events in the last two years.
- What other events will the organization produce next year? Do any conflict with the City's events?
- Did the vendor provide an organizational chart and main point of contract/event lead?

PROPOSED FEES and BUDGET (45 points)

- Did the vendor provide budget detail, by event?
- Based on previous productions according to the specifications provided, are the event budgets reasonable?
- Did the vendor provide detail specific to production equipment, stages and staffing?
- Did the vendor include a list of potential performers?

MARKETING and COMMUNICATIONS (15 points)

Page 45 of 600

- Did the vendor offer any marketing or promotional opportunities? (example: Magazines, flyers, commercials, etc.)
- What is the vendor's social media presence?

ENHANCEMENTS/OTHER NOTES (10 points)

- Did the vendor provide any photos or videos of previous productions?
- Provide at least three reference letters from previous or current clients.
- Availability of vendor for site walks, meetings, etc. at the City of Kissimmee?

2021 City of Kissimmee Festival Series Performance and Production Pay Schedule

Total budget of \$112,500.

Deposit #1 – June 7, 2021

\$22,500

Deposit #2 – August 7, 2021

\$22,500

Deposit #3 – November 7, 2021

\$22,500

Deposit #4 – March 7, 2022

\$22,500

Deposit #5 – June 7, 2022

\$22,500

***** THIS SCHEDULE OF OFFERS SHOULD BE THE FIRST PAGE SUBMITTED
WITH YOUR PROPOSAL ***
RFP2020-003**

I/we, the undersigned, hereby declare that I/we have reviewed the proposal documents and with full knowledge and understanding of all specifications and conditions contained therein do submit, (in duplicate), our proposal as follows with full understanding that the proposal package in its entirety is made a part of any agreement, contract or order between the City of Kissimmee and the successful proposer.

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>TOTAL COST</u>
A.	Kowtown Festival	\$ _____
B.	Night of Music Performance/Production	\$ _____
C.	PrideFest Performance/Production	\$ _____
D.	July 4 th Celebration Performance/Production	\$ _____
E.	Fandom Kissimmee Performance/Production	\$ _____
F.	Festival of Lights Parade/Production	\$ _____
G.	MLK Unity Celebration/Production	\$ _____
H.	Sunshine Festival Performance/Production	\$ _____

ACKNOWLEDGMENT OF ADDENDA NO.(S)_____(IF APPLICABLE)

(Signature)

ALL PRICES QUOTED ARE GOOD FOR A PERIOD OF 90 DAYS.

(initial) We do not take exception to Specifications.

(initial) We take exception to Specifications as follows:

(attach additional sheets, if necessary)

COMPANY NAME _____
COMPANY ADDRESS _____

NOTE: OFFERS NOT RECEIVED IN DUPLICATE MAY BE REJECTED.
VENDORS ARE RESPONSIBLE FOR DELIVERY OF THEIR PROPOSALS TO
THE ADDRESS INDICATED ON THE PROPOSAL COVER SHEET PRIOR TO
THE DATE AND TIME SHOWN.
PROPOSALS NOT SO DELIVERED MAY BE REJECTED.

BY: _____ DATE: _____
(signature)

(typed name/title of signer) EMAIL: _____

TELEPHONE NO.: (____)_____ FAX NO.: (____)_____

NOTICE

RFP2021-003

If for some reason you are not participating in this solicitation, PLEASE complete the following and return to:

City of Kissimmee
 Finance Department 4th Floor
 Attn: Purchasing Division
 101 Church Street
 Kissimmee, FL 34741

DO NOT return the solicitation package. Failure to respond may result in removal of your firm from our current vendor file.

Company Name: _____
 Address: _____

Phone Number: (____) _____

Fax Number: (____) _____

Continue on Vendor List: _____ Yes _____ No
 ___ Large Business ___ Small Business ___ Minority Owned

Reason for no response to the solicitation:

- _____ Cannot supply at this time
 _____ Suitable, but engaged in other work
 _____ Quantity too small
 _____ Cannot meet required minimum
 _____ Opening date does not allow sufficient time to complete
 _____ Equivalent not presently available
 _____ Other reasons or remarks: _____

 Signature

IDENTICAL TIE PROPOSALS

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals, which are equal with respect to price quality and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie proposals will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state for a violation occurring in the workplace no later than 5 days after such conviction.
- 5) Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Vendor's Signature

Local Vendor Affidavit of Eligibility

This form is to be completed in its entirety by the vendor and submitted along with your bid or quote. Incomplete forms will be rejected for preference evaluation.

State of Florida
County of Osceola

Before me on this ____ day of _____ 20__, personally appeared

(print name) _____ being an authorized representative of lawful age, who being by me first duly sworn, on his/her oath, deposes and says:

(print name of company) _____ MEETS ALL CRITERIA AS REQUIRED BY THE CITY OF KISSIMMEE TO QUALIFY FOR LOCAL VENDOR PREFERENCE. Qualification documentation attached.

Signature of Affiant

Typed/Printed Name of Affiant

Address of Affiant

State of Florida
County of _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____ 20__, by

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp commissioned name of notary public)____ personally known or _____ produced identification. Type of identification produced _____

REFERENCE FORM

List a minimum of three (3) customers for the services specified in the solicitation in the spaces provided.

Note: A contact person shall be someone who has personal knowledge of the bidder's performance for the specific requirement listed. Contact person must have been informed that they are being used as a reference and that the City may be calling them. Do not list persons who will be unable to answer specific questions regarding the requirements.

Ref #1. Customer/Client: _____
 Date of Services: _____
 Description of Services: _____
 Street Address: _____
 City, State, ZIP Code: _____
 Telephone #: _____ Fax #: _____
 Contact Person: _____ Email: _____

Ref #2. Customer/Client: _____
 Date of Services: _____
 Description of Services: _____
 Street Address: _____
 City, State, ZIP Code: _____
 Telephone #: _____ Fax #: _____
 Contact Person: _____ Email: _____

Ref #3. Customer/Client: _____
 Date of Services: _____
 Description of Services: _____
 Street Address: _____
 City, State, ZIP Code: _____
 Telephone #: _____ Fax #: _____
 Contact Person: _____ Email: _____

Ref #4. Customer/Client: _____
 Date of Services: _____
 Description of Services: _____
 Street Address: _____
 City, State, ZIP Code: _____
 Telephone #: _____ Fax #: _____
 Contact Person: _____ Email: _____

Ref #5. Customer/Client: _____
 Date of Services: _____
 Description of Services: _____
 Street Address: _____
 City, State, ZIP Code: _____
 Telephone #: _____ Fax #: _____
 Contact Person: _____ Email: _____

BIDDER NAME _____
 ADDRESS _____
 PRINTED SIGNATURE _____
 AUTHORIZED SIGNATURE _____
 TELEPHONE # _____ FAX# _____ DATE _____
 EMAIL: _____

BIDDER'S CHECKLIST

The items indicated are required for submission with your bid. Failure to submit any items indicated as required may result in rejection of the bid. Offers to provide required items after the date and time designated for the receipt of bid will not be considered.

- ☐ Signed Request for Proposal
- ☐ Proof of Incorporation
- ☐ Completed Reference Form
- ☐ Provide examples of least three public events in the last two years
- ☐ W-9 Form – Latest Edition (*if not on file with the City*)
- ☐ Copy of Insurance

In order for this bid to be valid, the above forms and information shall be completed in their entirety, signed by an authorized representative of the responding vendor, and returned as part of the bid response.

PERFORMANCE AND PRODUCTION SERVICES AGREEMENT

This AGREEMENT FOR PERFORMANCE AND PRODUCTION SERVICES (the “Agreement”) is made and entered into by the City of Kissimmee (the “City”) with its principal place of business at 101 Church Street, Kissimmee, Florida 34741 and [Business] (Vendor), with its principal place of business at [Business Address]. This Agreement is executed under seal and shall be effective on the date executed by the last party to execute it.

WHEREAS, the City requires performance and production services for City Events throughout the year; and

WHEREAS, the City advertised a Request for Proposal RFP2021-003 Exhibit A for Performance and Production Services on [insert date]; and

WHEREAS, Vendor submitted a proposal on [insert date] Exhibit B; and

WHEREAS, the City selected Vendor’s proposal.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Vendor Agree:

Terms and Conditions

1. The term of this Agreement shall commence at the date the last party executes the Agreement and will be in effect for three (3) years with the option to renew for an additional two (2) years if mutually agreed upon in writing by the Parties.
2. Vendor will provide the services set out in Exhibit B [Proposal] (attached hereto and made a part thereof), such services hereinafter referred to as the “Services,” including but not limited to talent acquisition, coordination, sound reinforcement and stage setup, transportation, setup and breakdown, and engineering and mixing. This shall cover the 2021 City of Kissimmee Festival Series.
3. On August 1, 2022, the City shall provide Vendor the list of events, required services, and pay schedule for the 2022-2023 City of Kissimmee Festival Series. The number of events in 2023 shall not exceed the number of events in 2022.
4. The total Agreement for Services is for \$112,500.00 for the 2021 City of Kissimmee Festival Series and \$112,500.00 for the 2022 City of Kissimmee Festival Series. This shall include airfare, ground transportation, artists’ fees, and any other related production costs. The City agrees to pay Vendor in accordance with Exhibit C [Pay Schedule] (attached hereto and made a part thereof).
5. Invoices are due and payable on receipt.

6. The City shall be responsible for any damage caused to Vendor's equipment during the performance of the Services which is caused by the City's employees. The City shall not be responsible for any damaged caused to Vendor's equipment by Vendor's employees, guests, or artists.
7. The City agrees to furnish a suitable place for Vendor to provide the Services, in accordance with Exhibit A.
8. Vendor at its sole cost and expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal government and departments, courts, commission board and officers thereof pertaining to the Services. In addition, Vendor shall adhere to all City of Kissimmee policies and restrictions.
9. Control of Premises:
 - a. The City premises, including keys thereto, shall be at all times under the control of the Parks & Recreation Director and/or designee or other duly authorized representatives of the City and they shall have the right to enter the premises at all times during the period covered by this Agreement and shall have free access at all times to all space occupied by Vendor.
 - b. The City shall provide credentials. Vendor shall provide the City with the list of staff that will require credentials.
 - c. Vendor expressly assumes all responsibility for all persons connected with Vendor's use of the premises, including all of its employees, agents, members, invitees, and licenses.
 - d. The City reserves the right through the Parks & Recreation Director and other City representatives, to eject any objectionable person or close the event should public safety be at risk.
10. It is expressly agreed that Vendor is not responsible for any act of commission or omission on the part of the City or the City's employees.
11. The City has exclusive rights to banners/signage/displays on or near the stage. The City has the right to use all the artists in promotional and marketing materials. The City has the right to review and approve event sponsors. Vendor is prohibited from having radio or television broadcasting, films, recordings or video tapes made of any performance or event in and/or on the facilities contracted hereunder, unless specific written permission is given by the Parks & Recreation Director and/or designee.
12. Vendor must obtain all required licenses and permits. Vendor assumes all costs arising from Vendor's use of patented, trademarked or copyrighted materials, equipment devices, processes, or dramatics rights used on or incorporated in the conduct of any event(s) covered under the permit. Vendor agrees to indemnify and hold harmless the City from all damages, costs, and expenses in law or equity for or on account of any patented, trademarked, or copyrighted materials, equipment, devices, processes or dramatic rights furnished or used by Vendor, or its performers and exhibitors,

in connection with this Agreement and will defend the City from any such suit or action, whether it be groundless or fraudulent.

13. The Parties may, upon providing each other thirty (30) days prior written notice, terminate this Agreement, in whole or in part, at any time, because of the failure of the parties to fulfill any obligation under this Agreement. Upon receipt of such notice from the City, Vendor shall immediately discontinue all services affected unless the notice directs otherwise. Vendor shall be paid for Services rendered up to the date of termination. The amount owed shall be determined based on the event budget breakdown provided by Vendor in Exhibit B. Vendor shall provide proof that the expenditures were already made prior to the date of termination. If the City terminates the Agreement, Vendor shall return any unused portion of the installment based on the budget in Exhibit B. Termination shall not excuse breaches of this Agreement which have already occurred, nor be a waiver of any rights which the City might have for past, current or future breaches.
14. In the event of inclement weather, or any force majeure on the performance date where City determines not to utilize the Services or Vendor deems it unsafe for performers, equipment, and Vendor's personnel, shall nevertheless be paid the amount stated in the event budget breakdown in Exhibit B, provided Vendor is present and ready to perform the services at the designated time as specified in Exhibit A, unless an alternate "rain date" has been negotiated and provided.
15. This Agreement cannot be assigned or transferred without the prior written consent of the City and Vendor. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida and venue shall be set in Osceola County, Florida.
16. It is hereby noted and agreed that Vendor will adhere to the insurance requirements in Exhibit A and provide a certificate of insurance for minimum of \$1,000,000.00 General Liability Insurance and \$1,000,000.00 umbrella or \$2,000,000.00 per occurrence General Liability naming the City of Kissimmee "additional insured." Auto liability insurance will be required in the amount of the general liability requirement if automobiles are used as part of the event. Workers compensation will be required if employees are hired for the event, according to Florida State Statutes. Vendor shall provide a copy of said policy and certificate no later than thirty (30) days after the execution of the Agreement. Should this Agreement be executed with less than thirty (30) days prior to the first scheduled event, Vendor shall provide a certificate of insurance at least five (5) days prior to the first event. If Vendor changes insurance providers or policies during the pendency of this Agreement, Vendor shall provide the City a new certificate of insurance within ten (10) days of the change.
17. The City and the City's employees and agents shall not be liable for any injury resulting from the actions of Vendor or Vendor's performers. Vendor agrees to hold the City harmless therefrom, including death to any person or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by Vendor or occurrence related in any way Vendor use or operation on the premises and adjacent area thereto. Vendor shall indemnify the City against all claims arising out of any injury to persons, including death or damage to property

caused by Vendor and its performers' negligence. Vendor shall defend any action brought against the City or any of its employees or agents based upon any alleged injury or damage caused by Vendor. Vendor shall pay all costs, including Attorney Fees, including any appeals filed, resulting from the action. The City has the right to reject or appoint an Attorney to defend said action.

18. No person, group or association shall be excluded from use of the facility or participation in any event because of race, religion, color, creed, disability, marital status, political affiliation, sex, sexual orientation or national origin.
19. It is mutually agreed by and between the City and Vendor that each of the parties do hereby waive trial by jury in any action, proceeding, or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action, the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings. This Agreement constitutes the entire Agreement between the parties and supersedes all previous misunderstandings. This Agreement may not be modified except by written consent of both Parties.
20. All notices required or permitted under this Agreement may be given personally or by certified mail, with return receipt postage paid, addressed to such party at the address herein or at such address as one party may from time to time notify the other in writing. Any notice delivered shall be addressed to the person at the address set forth below, or such other address or person as may have been subsequently specified by written notice to the other party delivered.

As to the City: Steve Lackey, Director Parks and Recreation Department City of Kissimmee 101 Church Street Kissimmee, Florida 34741	As to the Vendor:
--	-------------------

21. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable. Nothing in this Agreement is intended to be, nor shall be construed as an extension of liability beyond the statutory limitations of liability set forth in section 768.28 Florida Statutes. Except for the enforcement of the express provisions of this Agreement, which may only be enforced by the expressly identified parties to the Agreement, the City of Kissimmee shall have and maintain all rights, privileges, and immunities of sovereign immunity, including, but not limited to those at common law, and those rights and limitations of liability set out in section 768.28 Florida Statutes.

22. Vendor acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the Vendor shall keep and maintain public records required by the City to perform the service.

If the Vendor has questions regarding the application of Chapter 119, Florida Statutes, to the Vendor's duty to provide public records relating to this Agreement, contact the Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

IN WITNESS WHEREOF, the parties have executed this Agreement at Kissimmee, Florida on the ____ day of _____ 2021.

BUSINESS SIGNATURE BLOCK

[Name][Position]

Date

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, who is personally known to me or has produced identification.

Notary Seal:

Notary: _____

Print Name: _____

My Commission Expires: _____

CITY OF KISSIMMEE

ATTEST:

Linda Hansell, City Clerk

By: _____
Olga Gonzalez,
Mayor Commissioner

Approved as to Form and Legality

Olga Sanchez DeFuentes, City Attorney

ABSTRACT OF BIDS
City of Kissimmee
INVITATION/BID# RFP2021-003 Festival Performance and Production Services

OPENING DATE: April 30, 2021
 Time : 2:30PM

REQ. DEPARTMENT: Kaia Greene/Events Manager

DATE/ TIME	VENDOR NAME CITY AND STATE	A Kowtown Festival	B Night of Music	C Pride Fest	D July 4th	E Fandom Kissimmee	F Festival of Lights	G MLK Unity Celebration	H Sunshine Festival
4/30/21	PK Productions Plantation, FL	14,587.50	4,299.75	9,972.25	37,260.50	7,292.25	9,254	19,327.75	14,587.50
4/30/21	AXIS Pro Events Orlando, FL	13,000	5,000	10,000	40,000	5,000	11,250	15,250	13,000
4/30/21	Dream Wedding & Events Lake Park, FL	12,000	4,500	10,000	40,000	4,500	11,000	15,000	12,000

Notice of decision or intended decision concerning a bid solicitation or award may be given by posting the bid tabulation or recommended award at the location where the bids were opened or posted electronically on the City's website www.kissimmee.org. Failure to file a protest within the deadlines prescribed shall constitute a waiver of protest proceedings.

**City of Kissimmee | Purchasing Division
Finance Department 4th Floor
101 Church Street
Kissimmee, FL 34741**

REQUEST FOR PROPOSAL (RFP)

RFP-2021-003 Festival Performance and Production Services

REQUEST FOR PROPOSAL (RFP) Page 60 of 600

RFP-2021-003 Festival Performance and Production Services

I/we, the undersigned, hereby declare that I/we have reviewed the proposal documents and with full knowledge and understanding of all specifications and conditions contained therein do submit, (in duplicate), our proposal as follows with full understanding that the proposal package in its entirety is made a part of any agreement, contract or order between the City of Kissimmee and the successful proposer.

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>TOTAL COST</u>
A.	Kowtown Festival	\$ 13,000
B.	Night of Music Performance/Production	\$ 5,000
C.	PrideFest Performance/Production	\$ 10,000
D.	July 4 th Celebration Performance/Production	\$ 40,000
E.	Fandom Kissimmee Performance/Production	\$ 5,000
F.	Festival of Lights Parade/Production	\$ 11,250
G.	MLK Unity Celebration/Production	\$ 15,250
H.	Sunshine Festival Performance/Production	\$ 13,000

ACKNOWLEDGMENT OF ADDENDA NO.(S) 1 - 3 (IF APPLICABLE)

Sean Perry
(Signature)

ALL PRICES QUOTED ARE GOOD FOR A PERIOD OF 90 DAYS.

SP We do not take exception to Specifications.
(initial)

 We take exception to Specifications as follows:
(initial)

(attach additional sheets, if necessary)

COMPANY NAME aXisPro Events, Inc
COMPANY ADDRESS PO Box 2391
Orlando, FL 32802

NOTE: OFFERS NOT RECEIVED IN DUPLICATE MAY BE REJECTED.
VENDORS ARE RESPONSIBLE FOR DELIVERY OF THEIR PROPOSALS TO
THE ADDRESS INDICATED ON THE PROPOSAL COVER SHEET PRIOR TO
THE DATE AND TIME SHOWN.
PROPOSALS NOT SO DELIVERED MAY BE REJECTED.

BY: Sean Perry
(signature)

DATE: 04/25/21

Sean Perry
(typed name/title of signer)

EMAIL: sperry@axisproevents.com

TELEPHONE NO.: (407) 230.1367

FAX NO.: ()

REQUEST FOR PROPOSAL (RFP)

Page 61 of 600

RFP-2021-003 Festival Performance and Production Services

(Identical Tie Proposals)

IDENTICAL TIE PROPOSALS

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals, which are equal with respect to price quality and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie proposals will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state for a violation occurring in the workplace no later than 5 days after such conviction.
- 5) Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Sean Perry

Vendor's Signature

REQUEST FOR PROPOSAL (RFP)

RFP-2021-003 Festival Performance and Production Services

Table of Contents

- **Introduction Letter**

Schedule of Events:

- **Monumental 4th of July**
- **Fandom**
- **Festival of Lights**
- **MLK Unity Celebration**
- **Sunshine Chili Cook Off**
- **Kowtown Festival**
- **Night of Music**
- **Pridefest**

aXisPro Events Background:

- **Company Bio & Team Experience**
- **Example of Public Events**
- **Media & Promotional Assets**

aXisPro Events Information:

- **Proof of Incorporation**
- **W-9**
- **Copy of Insurance**
- **Complete Reference Form**

Letters of Reference:

- **Letter #1: College Park Main Street**
- **Letter #2: UCF Athletics**
- **Letter #3: Orlando Magic**
- **Letter #4: Thornton Park District**
- **Letter #5: Wall St Plaza**

THE CITY OF KISSIMMEE: RFP2021-003 Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: aXis Pro Events, Inc: Sean Perry / Rick Wheeler
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

To Whom it May Concern,

Per request, we are proposing the following production, talent and promotional ideas to assist in maximizing your attendance, media impressions and longterm community participation for the 2021-2022 calendar of events.

Having worked with the City of Kissimmee for the past three years, we take pride in the development of a unique event experience, always attempting to better the previous one, and offering the patrons a memorable celebration of their community.

aXisPro Events is proud of our experienced event & production directors that have faced many a weather and logistical-based challenge over the years, always keeping the attendees experience and safety in mind, delivering the event on schedule, and maintaining a seamless performance for the patrons of Kissimmee and their guests. From the unexpected weather developments at the 2018 Monumental 4th celebration, to the logistics of keeping a Supreme on schedule as Grand Marshal of the MLK Parade, and headliner of the MLK Concert, our team relished finding solutions to the various challenges.

We have enjoyed assisting in bringing many new ideas to fruition, from the visually stunning Star Wars themed 'May the 4th Be With You' at a **Night of Music**, to the iconic moment of welcoming **Mary Wilson** of The Supremes for **MLK Day 2020** and during Rob Base's unforgettable **4th of July Monumental performance**. As a full service Event Company, we also provide a three dimensional campaign to assist in the promotion of the City before, during and after each festival, **marketing** via print and social media prior to each event, printing City/Event Specific **Stage Scrims** for longterm branding and providing a **Sizzle Reel Video** for post event promotion.

With a history of producing regional events such as the **Celebration Founder's Day**, the **Florida Music Festival**, **College Park Jazzfest**, **Orlando Chili Cookoff**, **UCF Tailgate Concert Series**, **Orlando Magic FanFests** and more, we really take pride in the portfolio we have helped to create in the past few year's with the team at the City of Kissimmee.

Included is the executed Request For Proposal, along with a detailed outline of the Event Schedule, Letters of Reference from a variety of clients from Main Street Districts, major sports franchises and charities that we have had the pleasure of working with.

Please feel free to contact us for any further information and we look forward to your consideration for the 2021-22 calendar of events.

Sincerely,



Sean Perry / Rick Wheeler
aXisPro Events, Inc

THE CITY OF KISSIMMEE: RFP2021-003 Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

Monumental Fourth of July Sunday, July 4th, 2021 Kissimmee Lakefront Park Veterans & Festival Lawns



FESTIVAL LAWN MAINSTAGE: Stageline 250

- 32 x 24 stage footprint w/ extensions and roof, two stairs and ramp
- Banner Package: Side/Top mesh blow thru scrims w/ Kissimmee Logos
- AUDIO: EAW Line Array system**
- [16] EAW KLA line array / [8] MEYER 218 Dual 18's subs / [8] QSC K12 mons
- x32 Digital mixer & x32 digital monitor mixer (with wifi capability/so no FOH tent/cables)
- Full Band Shure/Sennheiser Mic Package w/ Wireless Package for Hosts
- 7 Techs (FOH/Mon/Stage tech/Stage Hands)

LIGHTING & LED: Intelligent Lighting Display

- 16 LED Pars / 4 Movers / 4 Flashers / 4 Strokes / Hazers / LED Package/Light tech
- LED Screens:** 2 8x12 LED Screens/Tech/Sync to Mains System
- Power:** 56kw 3 Phase generator w/ tails/feeder (Sunbelt)

TALENT

- 1 regional act (Pop/Rock Tribute: Prince, 80s Greatest Hits)
- 1 local R&B/funk/Reggae band
- 1 local rock/acoustic/blues act
- Special Guest 'Celebrity' Host (Joey Fatone/Lance Bass/Michael Winslow)
- DJ w/ MC (Special guest latin DJ with radio host as 'party starters like Lil Shawn)

CIVIC LAWN AUXILARY STAGE: TBD

Stage:

- 20 x 10 Tent w/ sidewalls & Backdrop Banner

Sound:

- 2 Tower: 4 KLA/2 181 System
- Small Band Mic Package (acoustic/pop)

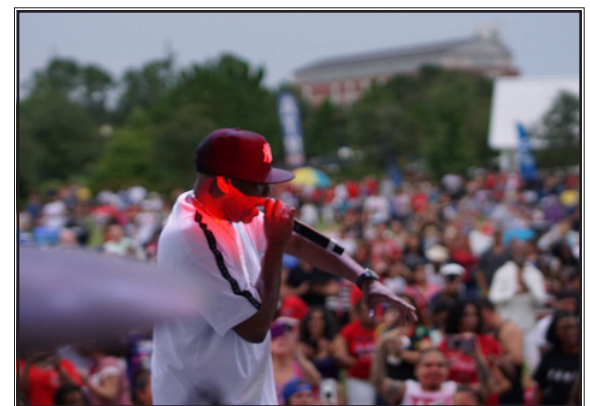
Talent:

- DJ w/ MC (Special guest latin DJ with radio host as 'party starters like Lil Shawn)
- Dance coordinator for kids and family line dancing

COMMUNITY/PROMOTION:

- **Stage Marketing Scrims:** Print Blow Thru banners that are event and brand specific.
- **Media Integration:** Utilize local media for VIP giveaways contests to residents, highlight MC/Host from local or regional celebrities via interviews and social media boosts.
- **Social Media Contests:** Dedicated Banner on back of stage with #Kissimmee to win prizes and VIP all day. Create and 'upgrade experience' via #Kissimmee posts throughout the afternoon. aXis Social Rep can assist in maintenance.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Production/Talent Fee = \$40,000



THE CITY OF KISSIMMEE: RFP2019-013 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

Fandom
Saturday, September 18th, 2021
Kissimmee Civic Center



MAINSTAGE: Decking System/Existing Stage

- Decking platform extending from Civic Center Stage to accommodate DJ and dance groups, along with large numbers for contests.

AUDIO: QSC Line Array system

- (4) QSC KLA line array / (4) QSC 181 Subs / (4) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Wireless Package for Hosts
- 1 Techs (FOH/Mon/Stage tech)

LIGHTING/FX: Smart Lighting Display/Show

- 8 LED Pars / 4 Movers / Smart LD Package/Hazer/tech
- FX throughout the venue during performances with full lighting capability for people to get clean photos and video
- Backdrop with focused lighting

TALENT:

- 1 DJ capable of hosting the contests and making announcements.

STEP & REPEAT: (contest)

- Have multiple sci fi 'celebrities' taking photos with guests for hashtag #KissimmeePride contests throughout the day.

COMMUNITY/PROMOTION:

- **Post/Text2Win:** Dedicated Signage throughout the venue with #Kissimmee to win prizes and VIP all day. Create a few VIP experiences to see Symphony's regionally via a texting platform on site, or social posting.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Production/Talent Fee = \$5,500



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

Festival of Lights Parade Saturday, December 11th, 2021

STAGE: Stageline 100

- 28 x 20 stage footprint w/ extensions and roof, two stairs and ramp
- Backdrop: Mesh blow thru material
- Banner Package: Side/Top mesh blow thru scrims w/ Kissimmee Logos

AUDIO: QSC Line Array system

- (6) QSC KLA line array / (2) QSC 218 Dual 18's subs / (4) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Shure/Sennheiser Mic Package w/ 4 Wireless w/ stands
- 3 Techs (FOH/Mon/Stage tech)

LIGHTING/FX: Intelligent Lighting Package

- Create atmospheric lighting on stage featuring Christmas themed colors
- 2 LED Bar(8 pars) wash / 2 Colored Red/Green/White LED Backdrop Bars
- Additional uplighting FX on key locations around Civic Center/Judges Platform and other highly visible areas for fun photos
- "Twinkle Package" featuring garland, tree lights and other simple decorations that add to the 'twinkle' coming from the stage area.

SATELLITE AUDIO: Announcer Stations:

- (4) Standalone Powered Dual K12.2 (2000 watt) Towers w/ Subs
- (4) Wireless Mic packages

COMMUNITY/PROMOTION:

- **Stage Marketing Scrims:** Print Blow Thru banners that are event and brand specific.
- **Post/Text2Win:** Dedicated Signage throughout the parade route with #Kissimmee or Text Entry to win prizes and VIP upgrade to 'stage seating'.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Talent: Booked MCs/Announcers selected via City

Production/Talent Fee = \$11,250



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

MLK Unity Celebration Saturday, January 15th, 2022

MAINSTAGE: Stageline 100

- 32 x 20 stage footprint w/ extensions and roof, two stairs and ramp
- Banner Package: Side/Top mesh blow thru scrims w/ Kissimmee Logos

AUDIO: QSC Line Array system

- (8) QSC KLA line array / (6) QSC 218 Dual 18's subs / (8) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Band Shure/Sennheiser Mic Package w/ Wireless Package for Hosts
- 3 Techs (FOH/Mon/Stage tech)
- Power:** 56kw 3 Phase generator w/ tails/feeder (Sunbelt)

TALENT

- 1 touring tribute act (Old School Hip Hop R&B/Soul)
(Doug E Fresh/Young MC/Salt n Pepa)
- 1 local R&B/Blues
- Special Guest House of Blues Gospel Band or similar high profile Gospel group to warm up the day
- DJ (DJ/HOST/MC from STAR94.5FM)

PARADE STAGE: MAP24

Sound: QSC Line Array system

- (4) QSC KLA line array / (2) QSC 218 Dual 18's subs / (2) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Shure/Sennheiser Mic Package w/ stands
- 2 Techs (FOH/Mon/Stage tech)

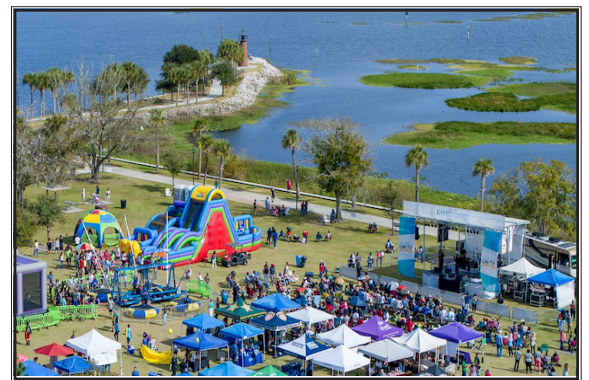
SATELLITE AUDIO: Announcer Stations:

- (2) Standalone Powered Dual K12.2 (2000 watt) Towers w/ Subs / (2) Wireless Mic packages

COMMUNITY/PROMOTION:

- **Stage Marketing Scrims:** Print Blow Thru banners that are event and brand specific.
- **Post/Text2Win:** Dedicated Signage throughout the parade route with #Kissimmee or Text Entry to win HOUSE OF BLUES GOSPEL BRUNCH VIP
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Production/Talent Fee = \$15,250



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

Sunshine Regional Chili Cook Off & Craft Beer Festival

Saturday, February 19th, 2022
Kissimmee Lakefront Park Festival Lawn

MAINSTAGE: Stageline 100

- 32 x 20 stage footprint w/ extensions and roof, two stairs and ramp
- Banner Package: Side/Top mesh blow thru scrims w/ Kissimmee Logos

AUDIO: QSC Line Array system

- (8) QSC KLA line array / (6) QSC 218 Dual 18's subs / (8) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Band Shure/Sennheiser Mic Package w/ Wireless Package for Hosts
- 3 Techs (FOH/Mon/Stage tech)

Power: 56kw 3 Phase generator w/ tails/feeder (Sunbelt)

TALENT:

- 1 touring Country Tribute Band (Kenny Chesney or Jason Aldean tribute act)
- 1 local blues/jam band (upbeat bluesy vibe)
- DJ (DJ from Cowboy's Country Bar)
- Line Dance: Dance Off Contests (with Host from WOLF MC orchestrating)

SATELLITE AUDIO: Instructional Tent

- Chili Chef and/or Brewmaster 'performing' instructional sessions with audio and wireless headset in separate tented area. Potential video feed available.
- (2) Standalone Powered Dual K12.2 (2000 watt) Towers w/ Subs / (2) Wireless Mic packages

COMMUNITY/PROMOTION:

- **Stage Marketing Scrims:** Print Blow Thru banners that are event and brand specific.
- **Post/Text2Win:** Dedicated Signage throughout the parade route with #Kissimmee or Text Entry to win VIP tastings.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).
- **Local Celebrities:** Bring in a few local Celebrity Cooking 'Judges' that are willing to do a Cooking Session in side tent, possibly have sponsored by a Publix or local BBQ joint, similar opportunity with local brewmasters.

Production/Talent Fee = \$13,000



THE CITY OF KISSIMMEE: RFP2019-013 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

Kowtown Festival Saturday, March 19th, 2022 Kissimmee Lakefront Park Festival Lawn

MAINSTAGE: Stageline 100

- 32 x 20 stage footprint w/ extensions and roof, two stairs and ramp
- Banner Package: Side/Top mesh blow thru scrims w/ Kissimmee Logos

AUDIO: QSC Line Array system

- (8) QSC KLA line array / (6) QSC 218 Dual 18's subs / (8) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Band Shure/Sennheiser Mic Package w/ Wireless Package for Hosts
- 3 Techs (FOH/Mon/Stage tech)

Power: 56kw 3 Phase generator w/ tails/feeder (Sunbelt)

TALENT:

- 1 regional touring Tribute Country Act (Top 40 Country themed set list)
- 1 regional top40 cover band (with Latin and dance themed set list)
- DJ (DJ Jorge) / Host from local tv station or Lil Shawn from 107FM Solos Exitos
- Salsa & Line Dance: Dance Off Contests (with Host MC orchestrating)

SATELLITE AUDIO: Instructional Tent

- BBQ Chefs from top local restaurants or Meat stores 'performing' instructional sessions with audio and wireless headset in separate tented area. Potential video feed available.
- (2) Standalone Powered Dual K12.2 (2000 watt) Towers w/ Subs / (2) Wireless Mic packages

COMMUNITY/PROMOTION:

- **Stage Marketing Scrims:** Print Blow Thru banners that are event and brand specific.
- **Post/Text2Win:** Dedicated Signage throughout the parade route with #Kissimmee or Text Entry to win 'VIP Experience Kowtown.' Local restaurant gift cards or something similar.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Production/Talent Fee = \$13,000



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

Night of Music
Saturday, May 7th, 2022
Kissimmee Civic Center

MAINSTAGE: Decking System

- Decking platform that can accommodate a 60 piece chair ensemble as well as a full band potentially in finale.

AUDIO: QSC Line Array system

- (8) QSC KLA line array / (6) QSC 218 Dual 18's subs / (8) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Band Shure/Sennheiser Mic Package w/ Wireless Package for Hosts
- 3 Techs (FOH/Mon/Stage tech)

Power: 56kw 3 Phase generator w/ tails/feeder (Sunbelt)

LIGHTING/FX: Smart Lighting Display/Show

- 16 LED Pars / 4 Movers / 4 Flashers / Smart LD Package/Hazer/tech
- FX throughout the venue during performances with full lighting capability for families to get clean photos and video
- Backdrop underlighting, offering FANTASIA effect for the conductor

TALENT:

- 1 regional symphony or Top 40 Symphonic ensemble
- Multiple student / string quartets / contemporary string acts (Grade School/Middle/High)
- MC/DJ to host the evening (UCF Radio)

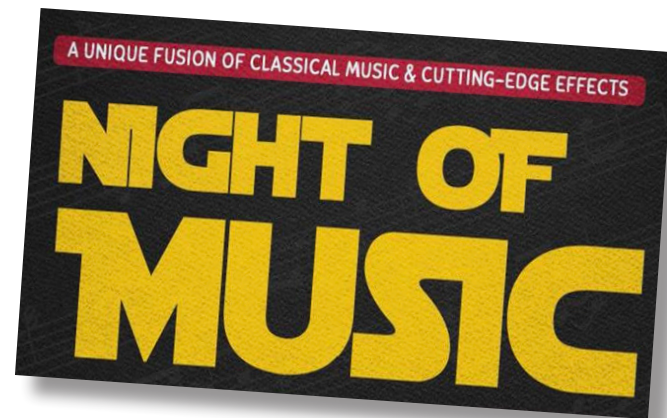
LOBBY STAGE:

- Have a 3 piece string traveling 'minstrels' similar to at Downtown Disney with retro clothing and playing top40 pop songs while staying in character.

COMMUNITY/PROMOTION:

- **Post/Text2Win:** Dedicated Signage throughout the venue with #Kissimmee to win prizes and VIP all day. Create a few VIP experiences to see Symphony's regionally via a texting platform on site, or social posting.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Production/Talent Fee = \$5,000



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-03 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

PrideFest Kissimmee Saturday, June 18th, 2022 Kissimmee Civic Center

MAINSTAGE: Decking System/Existing Stage

- Decking platform extending from Civic Center Stage to accommodate full bands and dance groups, along with large numbers for contests.

AUDIO: QSC Line Array system

- (6) QSC KLA line array / (4) QSC 181 Subs / (4) QSC K12 mons
- x32 Digital mixer monitors (with wifi capability/so no FOH tent/cables)
- Full Band Shure/Sennheiser Mic Package w/ Wireless Package for Hosts
- 3 Techs (FOH/Mon/Stage tech)

LIGHTING/FX: Smart Lighting Display/Show

- 16 LED Pars / 4 Movers / 4 Flashers / Smart LD Package/Hazer/tech
- FX throughout the venue during performances with full lighting capability for people to get clean photos and video
- Backdrop with focused lighting

TALENT:

- 1 touring LGBT known DJ/Diva or Duo (high energy) or Tribute Act (Boy George/George Michael)
- 1 regional Top40 Dance Act (featuring 70s and 80s disco and dance)
- DJ (DJ Nela or DJ Jorge)
- Special Guest Co-hosts of popular local/regional Divas

STEP & REPEAT: (contest)

- Have multiple radio celebs and diva 'celebrities' taking photos with guests for hashtag #KissimmeePride contests throughout the day.

COMMUNITY/PROMOTION:

- **Post/Text2Win:** Dedicated Signage throughout the venue with #Kissimmee to win prizes and VIP all day. Create a few VIP experiences to see Symphony's regionally via a texting platform on site, or social posting.
- **Video Doc:** aXis contracts a videographer featuring crowds, vendors, staff, performers on stage and backstage to create a viral presence post event and beyond, branding the event and city. (video provided w/ copyrights to City within one week).

Production/Talent Fee = \$10,000



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

COMPANY BIO & TEAM EXPERIENCE

25 Years of Trusted Event Production & Promotion

With over 25 years of Event Production and Promotional experience, the team boasts a background in Festival Coordination & Production, Artist Management and Media Promotion. This diverse background has enabled our team to look at an event from the perspective of a Promoter, Artist and the Media, in order to offer a well rounded experience and memorable moment.

aXis Pro Events is the preferred Mobile Stage Rental and Audio supplier for Orange, Seminole & Osceola County areas. From stage, sound & lighting to booking & coordination, aXisPro Events is your turnkey Event Management solution.

Team:

- Event Directors:

Sean Perry / Rick Wheeler

- Lead Technicians:

Tim Schuler / Matt Verduin / Bobby Cevetello / Julius Jiminez / Jovon Robertson

Client Portfolio:

aXis Productions & Events boasts a three dimensional event creation perspective bringing together the promoter, community and media partners. Our ongoing relationships are integral in developing successful first time as well as longterm concepts. Clients continue to see their audiences and sponsorship support expand in part due to the first class presentation that aXis Pro Events provides.

Venues & Sports Clients include:

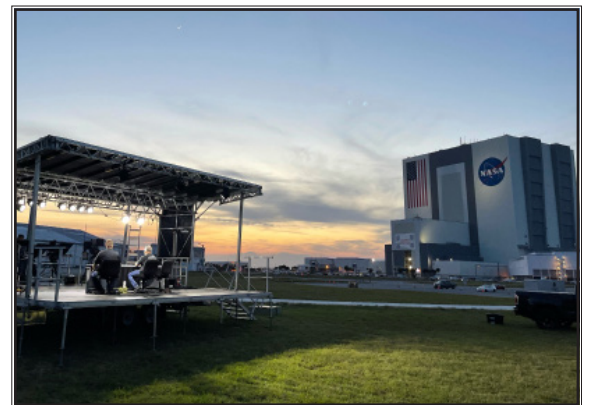
- The Backyard @ Ace Cafe
- Camping World Stadium
- Dr. Phillips Performing Arts Centre
- NASA
- Orlando City Soccer
- UCF Athletics
- Wall Street Plaza

Signature Events include:

- Florida Music Festival & Conference
- Flogrown Festival
- Great Orlando Craft Beer Festival
- Great Lakeland Craft Beer Festival
- Great Lake Mary Craft Beer Festival

Municipalities & Districts include:

- City of Altamonte
- City of Casselberry
- Celebration
- City of Clermont
- Church Street District
- College Park District
- City of DeBary
- City of Deltona
- City of Kissimmee
- City of Lake Mary
- Lake Nona
- City of Mount Dora
- Downtown Sanford
- Thornton Park District
- City of Winter Garden
- City of Winter Springs



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

EXAMPLE OF PUBLIC EVENTS

- COLLEGE PARK JAZZFEST

- College Park Jazzfest
- 2010 - Present
- Main Street Signature 4 block event with 3 Stages / 9 acts
- Exclusive Stage/Audio/Lighting Producer
- Talent Aquisition Consultant (Regional Talent)
- New Event Development Consultant
- Power Grid Consultant

- UCF FOOTBALL TAILGATE CONCERT SERIES

- 2017 - Present
- Gameday Concert featuring National Acts
- Exclusive Stage/Audio/Lighting Producer
- Talent Aquisition Consultant (Smashmouth/Luke Combs)
- Power Grid Consultant

- ST CLOUD 'Rockin' The Cloud' NYE

- 2018 - Present
- Downtown Signature 3 block event with 3 Stages / 9 acts
- Exclusive Stage/Audio/Lighting Producer
- Talent Aquisition Consultant (The Supervillains/Brooke Eden)

- FLORIDA MUSIC FESTIVAL & CONFERENCE

- 2002 - Present
- Founder: 3 day / 15 Stage / 150 Band Festival & Conference
- Exclusive Stage/Audio/Lighting Producer
- 150 Band Booking Agent & Stage Coordinator
(Taylor Swift/Fugees/Better Than Ezra/Flogging Molly)
- 3 Day Conference Booking & Coordinator

- ORLANDO MAGIC FANFEST

- 2017 - Present
- Exclusive Stage/Audio/Lighting Producer
- Band/DJ/Hype Team Pregame Festival
- Produced Jewish Heritage Night, Indian Festival, Playoff Fanfest



THE CITY OF KISSIMMEE: RFP2021-003 (cont) Festival Performance and Production Services

to: City of Kissimmee / Purchasing Division
from: Sean Perry / aXis Pro Events, Inc
re: RFP2021-003 Festival Performance and Production Services
date: 04.25.21

aXis Productions & Events Provides:

MEDIA & PROMOTIONAL ASSETS

- Print: aXis Magazine

- 25,000 Circulation to the 18-34 demographic
- Offer Quarterly Full Page Event Print Advertisements

- Social Media:

- Facebook.com/aXisProEvents: **5500** followers
- Facebook.com/OrlandoaXis: **10,500** followers
- Instagram.com/aXisOrlando: **2500** followers
- Twitter.com/aXisMagazine: **2600** followers
- Offer Boosted Posts per event announcement

- Text To Win:

- Text to Win VIP Upgrades or tickets to Events

- #Hashtag Contests:

- Adminster #Hashtag #Kissimmee contests per event with Step/Repeat Photos and DJ actively promoting and selecting winners onsite.

- Onsite: Banner Placement

- Stage Scrims: Print Blow Thru Event Specific Stage Scrims wrapping the stage to market the event and City brands
- Step/Repeat: Print Step/Repeat backdrops that are City and event specific for VIP/Fans/Patrons to market via selfies/etc

- Follow Up Content:

- 60 Second Video Sizzle Reel featuring Event performances, patrons and sponsors
- Photograph File including all images of stage, event, sponsors and patrons following the event.



REQUEST FOR PROPOSAL (RFP) Page 75 of 600
RFP-2021-003 Festival Performance and Production Services
(Proof of Incorporation)

State of Florida
Department of State

I certify from the records of this office that AXISPRO EVENTS, INC. is a corporation organized under the laws of the State of Florida, filed on February 17, 2005.

The document number of this corporation is P05000025727.

I further certify that said corporation has paid all fees due this office through December 31, 2021, that its most recent annual report/uniform business report was filed on April 8, 2021, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Eighth day of April, 2021*



Randy Bue
Secretary of State

Tracking Number: 1064952716CC

To authenticate this certificate, visit the following site, enter this number, and then follow the instructions displayed.

<https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>

REQUEST FOR PROPOSAL (RFP)

Page 76 of 600

RFP-2021-003 Festival Performance and Production Services

(Copy of Insurance)



AXISP-1

OP ID: CD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/03/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Sihle Insurance Group 570 Polaris Parkway Suite 500 Westerville, OH 43082 Sihle Insurance House Accounts	CONTACT NAME: Sihle Insurance House Accounts PHONE (A/C, No, Ext): 800-230-1468 FAX (A/C, No): 614-796-7808 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Westfield Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Axispro Events, Inc. PO Box 2391 Orlando, FL 32802	NAIC # 24112

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X		CWP4957617	10/03/2020	10/03/2021	<table style="width: 100%;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 150,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 1,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 4,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 4,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 2,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 150,000	MED EXP (Any one person)	\$ 1,000	PERSONAL & ADV INJURY	\$ 2,000,000	GENERAL AGGREGATE	\$ 4,000,000	PRODUCTS - COMP/OP AGG	\$ 4,000,000		\$
EACH OCCURRENCE	\$ 2,000,000																				
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	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A				<table style="width: 100%;"> <tr><td>PER STATUTE</td><td style="text-align: right;">\$</td></tr> <tr><td>OTH-ER</td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. EACH ACCIDENT</td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td style="text-align: right;">\$</td></tr> </table>	PER STATUTE	\$	OTH-ER	\$	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$				
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E.L. EACH ACCIDENT	\$																				
E.L. DISEASE - EA EMPLOYEE	\$																				
E.L. DISEASE - POLICY LIMIT	\$																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Kissimmee Is included as additional insured on the General Liability with respect to ongoing operations of the named insured for the certificate holder as required by written contract. All policy terms, conditions and exclusions apply.

CERTIFICATE HOLDER

CITKI-9

City of Kissimmee
101 N. Church Street
Kissimmee, FL 34741

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Diane Craker

REQUEST FOR PROPOSAL (RFP) Page 77 of 600

RFP-2021-003 Festival Performance and Production Services

(W-9)

Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification ▶ Go to www.irs.gov/FormW9 for instructions and the latest information.	Give Form to the requester. Do not send to the IRS.
--	--	--

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. aXisPro Events, Inc	2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ▶		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
5 Address (number, street, and apt. or suite no.) See instructions. PO Box 2391		Requester's name and address (optional)
6 City, state, and ZIP code Orlando, Florida 32802		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
			-						
or									
Employer identification number									
2	0	-	2	4	0	4	3	9	0

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶ Sean Perry	Date ▶ 04/01/21
------------------	--	------------------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

REQUEST FOR PROPOSAL (RFP) Page 78 of 600

RFP-2021-003 Festival Performance and Production Services

(Complete Reference Form)

Note: A contact person shall be someone who has personal knowledge of the bidder's performance for the specific requirement listed. Contact person must have been informed that they are being used as a reference and that the City may be calling them. Do not list persons who will be unable to answer specific questions regarding the requirements.

Ref #1. Customer/Client: Orlando Magic
Date of Services: 2018-2019 Season / Ongoing 2019-2020 Season
Description of Services: Official Fanfest Stage/Audio/Tech Services
Street Address: Amway Arena, 400 W Church Street, Suite 250
City, State, ZIP Code: Orlando, FL 32801
Telephone #: 407.916.2787 Fax #: 407.440.7001
Contact Person: Norman Shea Email: nshea@Orlandomagic.com

Ref #2. Customer/Client: Celebration CCMC
Date of Services: 2006 - Present
Description of Services: Exclusive Stage/Audio/Tech Services/Booking Consultant
Street Address: 851 Celebration Avenue
City, State, ZIP Code: Celebration, FL 34747
Telephone #: 407.566.1200 x 202 Fax #: 407.566.1210
Contact Person: J.R. Rupp Email: jrupp@celebrationtownhall.com

Ref #3. Customer/Client: College Park Main Street
Date of Services: 2011-Present
Description of Services: Exclusive Stage/Audio/Tech Services/Booking Consultant
Street Address: 648 Dartmouth Street
City, State, ZIP Code: Orlando, FL 32804
Telephone #: 407.446.0812 Fax #: 407.392.1717
Contact Person: Reggie Lyons Email: reggie@collegeparkmainstreet.com

Ref #4. Customer/Client: University of Central Florida Athletics
Date of Services: 2107- Present
Description of Services: Exclusive Stage/Audio/Tech Services/Booking Consultant
Street Address: UCF Spectrum Stadium, 4465 Knights Victory Way
City, State, ZIP Code: Orlando, FL 32816
Telephone #: 407.823.4943 Fax #: 407.823.5293
Contact Person: Adrienne Bridges Email: abridges@athletics.ucf.edu

Ref #5. Customer/Client: Thornton Park District / Main Street
Date of Services: 2012-Present
Description of Services: Audio/Tech Services/Booking Consultant
Street Address: 617 East Central Blvd
City, State, ZIP Code: Orlando, FL 32801
Telephone #: 407.701.9382 Fax #: 407.701.9382
Contact Person: Lisa Cuatt Email: thorntonparkorlando@gmail.com

BIDDER NAME aXisPro Events, Inc / Sean Perry
ADDRESS PO Box 2391, Orlando, FL 32802
PRINTED SIGNATURE Sean Perry
AUTHORIZED SIGNATURE Sean Perry
TELEPHONE # 407.230.1367 FAX# DATE 05/45/21
EMAIL: sperry@axisproevents.com

REQUEST FOR PROPOSAL (RFP)^{Page 79 of 600}

RFP-2021-003 Festival Performance and Production Services

(Reference Letter #1)



Date: September 10, 2019

From: College Park Main Street
Reggie Lyons, Director of Events and Fundraising

To: City of Kissimmee

Subject: Letter of Reference for Axis Productions

College Park Main Street has worked with Axis Productions for more than seven years and they have done an excellent job with our three annual street festivals on Edgewater Drive (College Park Jazz Fest, College Park Spring Fest, and Holiday on the Drive) that attract thousands of attendees.

Year after year, the Axis team provides both professional equipment for our live entertainment needs as well the top-notch technical support for efficient setup, tear down, and management of our events.

They go above and beyond their own mandate to ensure the College Park Main Street events are a great success, and are always available to provide professional guidance when we call.

College Park Main Street is a 501(c)(3) non-profit organization in Orlando, Florida with the mission to lead, champion and inspire the development of College Park into a thriving community of actively engaged residents and businesses to create a rich quality of life for everyone who lives, plays, and works here.



REQUEST FOR PROPOSAL (RFP)^{Page 80 of 600}

RFP-2021-003 Festival Performance and Production Services

(Reference Letter #2)



UCF Athletics Association, Inc.
4465 Knights Victory Way
Orlando, FL 32816

September 10, 2019

To Whom It May Concern:

On behalf of the University of Central Florida Athletics Association, Inc. (UCFAA) we are pleased to recommend aXis Production & Events for any future events.

The aXis production team is great to work with for many reasons, but most of all because no idea is too big or too small for them. Their company goes above and beyond for UCFAA through their past contracted services while always providing exceptional customer service. Whether it is working with our staff on our Tailgate Concert Series events prior to home football games or installing our lighting production for football, basketball, and volleyball programs. aXis truly puts their clients' needs first.

The aXis production team always finds a way to complete any task given to them with the utmost level of professionalism. We are very fortunate to have a great partnership with aXis Production & Events and hope you choose to work with them for your next project!

If you have any questions or would like to talk with us more in depth, please do not hesitate to reach out at your convenience. You can reach Steve Robertson at (407) 823-4943 or Michelle Stenger at (407) 882-0383 during business hours.

Sincerely,

Steve A. Robertson III
Associate Director, Experiential Innovation | Brand Advancement
srobertson@athletics.ucf.edu
(407) 823-4943

Michelle Stenger
Director, Discovery & Advertising | Brand Advancement
mstenger@athletics.ucf.edu
(407) 882-0383



REQUEST FOR PROPOSAL (RFP)^{Page 81 of 600}

RFP-2021-003 Festival Performance and Production Services

(Reference Letter #3)



8701 Maitland Summit Boulevard Orlando Florida 32810

400 West Church Street Orlando Florida 32801

www.orlandomagic.com

Monday, September 9th, 2019

To Whom it May Concern,

I am writing on behalf of aXis Pro Events, a stage rental company I have had the pleasure of working with all last season. aXis have provided world class service and production for the NBA's Orlando Magic through our Fan Fest events and our larger Playoff events.

aXis have consistently provided an extremely high level of customer service to myself but most importantly to the fans and patrons who attend these events. aXis was a staple of our Fan Fest last season with their unbelievable stage set-up that includes world-class lighting and sound. Last season the Orlando Magic made the playoffs for the first time in 7 years. We brought out aXis to handle the whole production of our Fan Fest show that included a LED Board, Lighting and Sound. Everyone was blown away with the final product and the experience was second to none.

aXis has a true passion for production. Their dedication, commitment, and reliability are on display at each and every event. They have flawlessly represented the Orlando Magic at all events they have participated in. They have earned our trust and respect, and they will always be our go to vendor for stage rental and high-end production.

I am happy to answer any questions you may have regarding aXis. I can be reached at (407)-916-2787 or at nshea@orlandomagic.com. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman Shea". The signature is fluid and cursive, with a large, stylized "N" and "S".

Norman Shea

Live Entertainment Specialist

Orlando Magic

REQUEST FOR PROPOSAL (RFP) Page 82 of 600
RFP-2021-003 Festival Performance and Production Services
(Reference Letter #4)



THORNTONPARKDISTRICT.COM

September 9, 2019

To Whom It May Concern:

We have worked with the Axis Team for the past 6 years for our Friday Night Live, Halloween Block Party and 420 East Church Street Celebration. They have supplied us with Staging, Sound and Lighting for these events along with a professional team for set up, execution of the event and break down. We highly recommend them and please feel free to call us at 407-701-9382 for any further conversations about their services.

Sincerely yours,

Lisa Cuatt

Executive Director of the Thornton Park District

REQUEST FOR PROPOSAL (RFP)

RFP-2021-003 Festival Performance and Production Services

(Reference Letter #5)



25 Wall St. • Orlando, FL 32801
407-849-1532 • 407-849-0471 • fax 407-872-0429

September 9, 2019

To Whom it May Concern,

I am writing you on behalf AXIS Pro Events, who have been a longtime vendor and partner of us here at Wall St. Plaza. For over a decade working with and on our account, we have been extremely pleased with AXIS' stage and sound equipment along with the quality of their performance and attention to our events. The owners Sean Perry and Rick Wheeler, as well as all the AXIS staff, have proven to be hard working, technically proficient and willing to do whatever is needed to get the job done. They have always been on top of all our technical and production needs and often go above and beyond typical duties, spotting and handling potential issues before they become problems.

In addition to stage and sound production, we have worked together on several events and find them to be valued partners bringing much to the table. We have found their experience and expertise in events as well as their marketing and promotion to be of significant value and one thing that sets them apart from many other similar companies.

In a competitive market for event production, AXIS has always been extremely competitive with fair pricing, while keeping their equipment up to date and periodically getting better in quality and quantity of options.

We plan to continue using AXIS Pro Events into the future and grow our relationship when possible.

Thanks for considering our opinion.

Sincerely,

Paul Emery and the Wall St. Plaza Management Staff

Paul Emery
Events & Marketing Director
Wall St. Plaza

WALLSTPLAZA.NET



PERFORMANCE AND PRODUCTION SERVICES AGREEMENT

This AGREEMENT FOR PERFORMANCE AND PRODUCTION SERVICES (the “Agreement”) is made and entered into by the City of Kissimmee (the “City”) with its principal place of business at 101 Church Street, Kissimmee, Florida 34741 and aXisPro Events, Inc. (the “Vendor”), with its principal place of business at P.O. Box 2391, Orlando, FL 32802. This Agreement is executed under seal and shall be effective on the date executed by the last party to execute it.

WHEREAS, the City requires performance and production services for City Events throughout the year; and

WHEREAS, the City advertised a Request for Proposal RFP2021-003 Exhibit A for Performance and Production Services on April 11, 2021; and

WHEREAS, Vendor submitted a proposal on April 25, 2021 Exhibit B; and

WHEREAS, the City selected Vendor’s proposal.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Vendor Agree:

Terms and Conditions

1. The term of this Agreement shall commence at the date the last party executes the Agreement and will be in effect for three (3) years with the option to renew for an additional two (2) years if mutually agreed upon in writing by the Parties.
2. Vendor will provide the services set out in Exhibit B [Proposal] (attached hereto and made a part thereof), such services hereinafter referred to as the “Services,” including but not limited to talent acquisition, coordination, sound reinforcement and stage setup, transportation, setup and breakdown, and engineering and mixing. This shall cover the 2021 City of Kissimmee Festival Series. Vendor will also provide the following services for the 2021 Juneteenth Event to take place on June 19, 2021 between 10 a.m. and 3 p.m. at Festival Lawn in Lake Front Park:

Vendor will provide two (2) performers and one (1) host. The City will provide a DJ. Vendor will provide one (1) stage, at least 20 feet by 24 feet with a roof, skirting, guard rails and back drop. Vendor will provide the same audio equipment as listed in Exhibit B for the Sunshine Regional Chili Cook Off & Craft Beer Festival. Vendor will provide appropriate tech staffing to support production of the performance.

3. On August 1, 2022, the City shall provide Vendor the list of events, required services, and pay schedule for the 2022-2023 City of Kissimmee Festival Series. The number of events in 2023 shall not exceed the number of events in 2022.

4. The total Agreement for Services is for \$112,500.00 for the 2021 City of Kissimmee Festival Series, \$112,500.00 for the 2022 City of Kissimmee Festival Series, \$112,500.00 for the 2023 City of Kissimmee Festival Series, and \$6,000 for the 2021 Juneteenth Event. This shall include airfare, ground transportation, artists' fees, and any other related production costs. The City agrees to pay Vendor in accordance with Exhibit C [Pay Schedule] (attached hereto and made a part thereof) for the City of Kissimmee Festival Series. The City also agrees to pay Vendor \$6,000 on June 19, 2021 for the 2021 Juneteenth Event.
5. Invoices are due and payable on receipt.
6. The City shall be responsible for any damage caused to Vendor's equipment during the performance of the Services which is caused by the City's employees. The City shall not be responsible for any damaged caused to Vendor's equipment by Vendor's employees, guests, or artists.
7. The City agrees to furnish a suitable place for Vendor to provide the Services, in accordance with Exhibit A.
8. Vendor at its sole cost and expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal government and departments, courts, commission board and officers thereof pertaining to the Services. In addition, Vendor shall adhere to all City of Kissimmee policies and restrictions.
9. Control of Premises:
 - a. The City premises, including keys thereto, shall be at all times under the control of the Parks & Recreation Director and/or designee or other duly authorized representatives of the City and they shall have the right to enter the premises at all times during the period covered by this Agreement and shall have free access at all times to all space occupied by Vendor.
 - b. The City shall provide credentials. Vendor shall provide the City with the list of staff that will require credentials.
 - c. Vendor expressly assumes all responsibility for all persons connected with Vendor's use of the premises, including all of its employees, agents, members, invitees, and licenses.
 - d. The City reserves the right through the Parks & Recreation Director and other City representatives, to eject any objectionable person or close the event should public safety be at risk.
10. It is expressly agreed that Vendor is not responsible for any act of commission or omission on the part of the City or the City's employees.
11. The City has exclusive rights to banners/signage/displays on or near the stage. The City has the right to use all the artists in promotional and marketing materials. The City has the right to review and approve event sponsors. Vendor is prohibited from having radio or television broadcasting, films, recordings or video tapes made of any performance or event in and/or on the facilities

contracted hereunder, unless specific written permission is given by the Parks & Recreation Director and/or designee.

12. Vendor must obtain all required licenses and permits. Vendor assumes all costs arising from Vendor's use of patented, trademarked or copyrighted materials, equipment devices, processes, or dramatics rights used on or incorporated in the conduct of any event(s) covered under the permit. Vendor agrees to indemnify and hold harmless the City from all damages, costs, and expenses in law or equity for or on account of any patented, trademarked, or copyrighted materials, equipment, devices, processes or dramatic rights furnished or used by Vendor, or its performers and exhibitors, in connection with this Agreement and will defend the City from any such suit or action, whether it be groundless or fraudulent.
13. The Parties may, upon providing each other thirty (30) days prior written notice, terminate this Agreement, in whole or in part, at any time, because of the failure of the parties to fulfill any obligation under this Agreement. Upon receipt of such notice from the City, Vendor shall immediately discontinue all services affected unless the notice directs otherwise. Vendor shall be paid for Services rendered up to the date of termination. The amount owed shall be determined based on the event budget breakdown provided by Vendor in Exhibit B. Vendor shall provide proof that the expenditures were already made prior to the date of termination. If the City terminates the Agreement, Vendor shall return any unused portion of the installment based on the budget in Exhibit B. Termination shall not excuse breaches of this Agreement which have already occurred, nor be a waiver of any rights which the City might have for past, current or future breaches.
14. This Agreement may be altered, amended, extended, modified and/or revised only by a written instrument subsequently executed by the parties to this Agreement.
15. In the event of inclement weather, or any force majeure on the performance date where City determines not to utilize the Services or Vendor deems it unsafe for performers, equipment, and Vendor's personnel, shall nevertheless be paid the amount stated in the event budget breakdown in Exhibit B, provided Vendor is present and ready to perform the services at the designated time as specified in Exhibit A, unless an alternate "rain date" has been negotiated and provided.
16. This Agreement cannot be assigned or transferred without the prior written consent of the City and Vendor. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida and venue shall be set in Osceola County, Florida.
17. It is hereby noted and agreed that Vendor will adhere to the insurance requirements in Exhibit A and provide a certificate of insurance for minimum of \$1,000,000.00 General Liability Insurance and \$1,000,000.00 umbrella or \$2,000,000.00 per occurrence General Liability naming the City of Kissimmee "additional insured." Auto liability insurance will be required in the amount of the general liability requirement if automobiles are used as part of the event. Workers compensation will be required if employees are hired for the event, according to Florida State Statutes. Vendor shall provide a copy of said policy and certificate no later than thirty (30) days after the execution

of the Agreement. Should this Agreement be executed with less than thirty (30) days prior to the first scheduled event, Vendor shall provide a certificate of insurance at least five (5) days prior to the first event. If Vendor changes insurance providers or policies during the pendency of this Agreement, Vendor shall provide the City a new certificate of insurance within ten (10) days of the change.

18. The City and the City's employees and agents shall not be liable for any injury resulting from the actions of Vendor or Vendor's performers. Vendor agrees to hold the City harmless therefrom, including death to any person or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by Vendor or occurrence related in any way Vendor use or operation on the premises and adjacent area thereto. Vendor shall indemnify the City against all claims arising out of any injury to persons, including death or damage to property caused by Vendor and its performers' negligence. Vendor shall defend any action brought against the City or any of its employees or agents based upon any alleged injury or damage caused by Vendor. Vendor shall pay all costs, including Attorney Fees, including any appeals filed, resulting from the action. The City has the right to reject or appoint an Attorney to defend said action.
19. No person, group or association shall be excluded from use of the facility or participation in any event because of race, religion, color, creed, disability, marital status, political affiliation, sex, sexual orientation or national origin.
20. It is mutually agreed by and between the City and Vendor that each of the parties do hereby waive trial by jury in any action, proceeding, or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action, the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings. This Agreement constitutes the entire Agreement between the parties and supersedes all previous misunderstandings. This Agreement may not be modified except by written consent of both Parties.
21. All notices required or permitted under this Agreement may be given personally or by certified mail, with return receipt postage paid, addressed to such party at the address herein or at such address as one party may from time to time notify the other in writing. Any notice delivered shall be addressed to the person at the address set forth below, or such other address or person as my have been subsequently specified by written notice to the other party delivered.

As to the City: Steve Lackey, Director Parks and Recreation Department City of Kissimmee 101 Church Street Kissimmee, Florida 34741	As to the Vendor: Sean Perry, VP aXisPro Events, Inc. P.O. Box 2391 Orlando, Florida 32802
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22. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable. Nothing in this Agreement is intended to be, nor shall be construed as an extension of liability beyond the statutory limitations of liability set forth in section 768.28 Florida Statutes. Except for the enforcement of the express provisions of this Agreement, which may only be enforced by the expressly identified parties to the Agreement, the City of Kissimmee shall have and maintain all rights, privileges, and immunities of sovereign immunity, including, but not limited to those at common law, and those rights and limitations of liability set out in section 768.28 Florida Statutes.
23. Vendor acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the Vendor shall keep and maintain public records required by the City to perform the service.

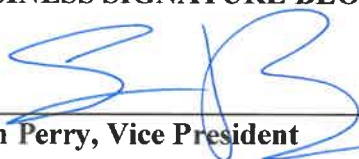
If the Vendor has questions regarding the application of Chapter 119, Florida Statutes, to the Vendor's duty to provide public records relating to this Agreement, contact the Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

- a. If the City's Custodian of Records requests records from the Vendor, the Vendor shall provide the City's Custodian of Records with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost charged by the City of Kissimmee, as provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- b. The Vendor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the Agreement if the Vendor does not transfer the records to the City.
- c. Upon completion of the Agreement, the Vendor shall transfer, at no cost, to the City all public records in possession of the Vendor or keep and maintain public records required by the City to perform the service. If the Vendor transfers all public records to the City upon completion of the Agreement, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Agreement, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. Unless otherwise directed by the City, all records will be transferred at the conclusion of the Agreement.

- d. Upon notice to the Vendor of a request to inspect or copy public records relating to a City's Agreement for services, the Vendor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- e. If the Vendor does not comply with the City's request for records, such failure shall constitute a material breach and the Agreement shall terminate upon notice by the City.
- f. A Vendor who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

IN WITNESS WHEREOF, the parties have executed this Agreement at Kissimmee, Florida on the 24th day of MAY 2021.

BUSINESS SIGNATURE BLOCK


Sean Perry, Vice President

5/24/21
Date

STATE OF FLORIDA)
 COUNTY OF Osceola)

The foregoing instrument was acknowledged before me this 24th day of May, 2021, by Sean Perry, who is personally known to me or has produced identification.

Notary Seal:



ANDREA CAMPBELL
 Commission # GG 924785
 Expires February 21, 2024
 Bonded Thru Budget Notary Services

Notary:

Andrea Campbell
 Print Name: Andrea Campbell
 My Commission Expires: February 21, 2024

CITY OF KISSIMMEE

ATTEST:

Linda Hansell, City Clerk

By: Olga Gonzalez,
 Mayor Commissioner

Approved as to Form and Legality

Olga Sanchez DeFuentes, City Attorney

ITEM 7.C**AWARD LANDSCAPE SERVICES AGREEMENT FOR KISSIMMEE LAKEFRONT PARK****Request**

Approval to award landscape services for Lakefront Park to Groundtek of Central Florida, Inc. in an amount up to \$136,500 and authorize the City Manager to sign the agreement and any subsequent renewals.

Explanation

The Parks and Recreation Department, pursuant to 4.3.1.1 of the City of Kissimmee's Purchasing Code, and in accordance with Florida Statute Chapter 287, desires to use cooperative purchasing to procure landscape services utilizing the competitive bidding and selection process of Orange County as the lead public agency.

Groundtek of Central Florida, LLC has continually provided landscape services at the Kissimmee Lakefront Park since February 2016 and has agreed to continue to provide services under this contract at the current rate of \$3,500 per cycle with a maximum of 39 cycles annually or \$136,500 per year.

The master agreement Y19-1131 has a term through December 1, 2022 with two (2) one (1) year renewals and allows the City to terminate the agreement for cause or convenience. All necessary insurance and surety bonds are in place.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00150203-504646	N/A	Decrease	\$61,902*	\$136,500

Financial Summary:

A portion of the funds for this contract is available in the current year Park Operations building and grounds maintenance account. Since the balance of this contract will be paid in the next fiscal year, the FY 2022 budget will contain the monies necessary to cover the balance of the contract.*

Recommendation

Staff recommends City Commission award landscape services for Lakefront Park to Groundtek of Central Florida, Inc. in an amount up to \$136,500 and authorize the City Manager to sign the agreement and any subsequent renewals between the City of Kissimmee and Groundtek of Central City of Kissimmee

Florida, Inc. of Ocoee, Florida.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. Groundtek 2021 Contract
2. Y19-1131 Orange County Contract
3. CITY OF KISSIMMEE LAKEFRONT PARK PROPOSAL 4-2021
4. Lakefront Mowing Map (Attachment A)
5. BA2016-004 Plant manual Lakefront (Attachment B)

AGREEMENT between CITY OF KISSIMMEE

and

GROUNDTEK OF CENTRAL FLORIDA LLC

THIS AGREEMENT is made this _____ day of _____ 2021 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter “City” and GROUNDTEK OF CENTRAL FLORIDA LLC whose business address is 858 Maguire Road, Ocoee, Florida 34761, hereinafter “Contractor” and each represents as follows:

WITNESSETH

WHEREAS, City is in need of ground maintenance for various City owned properties, more particularly described herein the Scope of Services, and hereinafter collectively referred to as “Services”; and

WHEREAS, Chapter 287, Florida Statutes, grants government entities the authority to purchase goods and Services as a form of inter-governmental cooperative purchasing in order to reduce administrative time and costs involved in the procurement process (i.e., cost of preparing bid specifications, advertising, etc.); and

WHEREAS, Pursuant to 4.3.1.1 of the City’s Purchasing Code, the City may use Cooperative Purchasing to procure goods and services from the State of Florida contracts or any of its Governmental subdivisions to achieve cost savings by combining requirements into cooperative contracts and when it is in the best interest of the City; and

WHEREAS, on February 12, 2019, pursuant to a competitive bidding and selection process Orange County, Florida, as Lead Public Agency, entered into Novation Agreement (Y19-1131) with Contractor, with a term through December 1, 2022; and

WHEREAS, City has determined that it is in the best interest of the City to enter to contract with Contractor to provide the service as detailed in the service proposal, attached hereto as Attachment “A”; and

NOW THEREFORE, in consideration of the foregoing mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to as follows:

- 1. RECITALS.** The foregoing recitals are true and correct and incorporated herein.
- 2. TERM.** The term of this Agreement shall be effective from _____, 2021 to December 1,

2022. The City shall retain the option, at its sole discretion, to award up to two, one-year renewal periods to the selected Contractor.

3. **SCOPE OF WORK.** Contractor agrees to perform the Scope of Work outlined in Attachment “A” This shall include Kissimmee Lakefront Park - 201 Lakeview Drive, Kissimmee FL 34741 to include Phase IV & Neptune Median.
4. **PAYMENT.** The City agrees to pay Contractor for good and services as set forth in attached Proposal (\$152,100 annually). Invoices shall provide details of all project expenses permitted in this Agreement. Upon review and approval of the Contractor’s invoice and verification that services have been rendered in conformity with this Agreement, the City, through payment issued by the Parks and Recreation Department, shall pay Contractor in accordance with the Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Contractor shall not apply any late charges, interest or penalties to any invoice or charges for services until thirty (30) days from the City’s receipt of the invoice. If this Agreement is terminated for convenience for any reason, then the Contractor shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred to the effective date of termination.
5. **E-VERIFY.** *As a condition precedent to entering into this AGREEMENT*, and in compliance with Section 448.095, Fla. Stat., Contractor and its Sub Contractors shall, register with and use the E-Verify system to verify work and authorization of all employees hired after January 1, 2021.
 - a. Contractor shall require each of its Sub Contractors to provide Contractor with an affidavit stating that the Sub Contractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the Sub Contractor’s affidavit as part of and pursuant to the records retention requirements of this Agreement.
 - b. The City, Contractor or any Sub Contractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. The City, upon good faith belief that a Sub Contractor knowingly violated the provisions of this section, but Contractor otherwise, complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the Sub Contractor.
 - d. A contract terminated under the provision of this section is not a breach of contract and

may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section §448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this Agreement by the City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the City as a result of termination of any contract for violation of this section.

- e. *Subcontracts*: Contractor or Sub Contractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the Sub Contractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Sub Contractor or lower tier Sub Contractor with the clauses set forth in this section.

6. **INDEMNIFICATION.** To the extent permitted by law, Contractor, hereby releases and waives all claims against the City of Kissimmee, its officers, employees, agents, independent Contractors for any injury or damage to the person, property, or business of Contractor, its agents, employees, Sub Contractors, or other persons, for which injury or damage results from any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Notwithstanding, nothing in this Agreement shall be construed as a waiver by the City of its right to statutory sovereign immunity pursuant to Florida Statute §768.28. Contractor agrees to indemnify and hold harmless the City, its agents, officers, employees, against any and all claims, demand, cost, and expenses of every kind and nature including reasonable attorney's fee's and for the enforcement, defense, or appeals thereof arising from Contractor's performance of the Agreement or any breach or default of Contractor.
7. **INSURANCE.** Contractor shall be responsible for all damages to person or property that occur on the job site or adjacent thereto as a result of Contractor's fault or negligence in connection with this Agreement. Contractor shall, prior to commencing work, furnish evidence to the City of Kissimmee of required insurance requirement naming City of Kissimmee as additional insured. During the term of the Agreement and any renewals, Contractor at their sole cost and expenses shall maintain insurance coverage as follows:
 - a. **Workers Compensation**: Contractor will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.
 - b. **Comprehensive General Liability**: Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.

- c. **Comprehensive Automobile Liability**: Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
- d. **Umbrella Insurance**: Contractor will provide an umbrella in excess to the coverage in paragraphs B), and C) of not less than \$1,000,000.00.

- 8. **PERFORMANCE BOND**. Contractor shall post a performance bond for the total amount of the Project.
- 9. **NOTICE**. Any and all notices required by this agreement shall be in writing and either hand delivered or, if sent by U.S. Mail or overnight delivery shall be addressed as follows:

City of Kissimmee Steve L. Lackey Parks and Recreation 101 Church Street, Suite 330 Kissimmee, FL 34741	Contractor Gregory Bori Groundtek of Central Florida, LLC 858 Maguire Road Ocoee, Florida 34761
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- 10. **SUBCONTRACTORS**. All Sub Contractors shall be bound by the terms and conditions of this Agreement insofar as it applies to their work, but this shall not relieve the Contractor from the responsibility to the City for the proper completion of all work to be executed under this Agreement, and the Contractor shall not be released from the responsibility by any Sub Contractor agreement the Contractor makes with others. If applicable, Contractor shall be required to furnish to the City, in writing, a list of names of the Sub Contractors proposed for the principal parts of the work within five (5) days of the Notice to Proceed.
- 11. **NON-ASSIGNMENT**. Contractor shall not assign this Agreement or any portion hereof without the express written consent of the City.
- 12. **GOVERNING LAW**. The laws of the State of Florida govern the validity, enforcement, and interpretation of this Agreement. Venue for any cause of action asserted by any party brought in State Court shall be in Osceola County. Venue for any action brought in Federal court shall be in the Middle District of Florida, Orlando Division.
- 13. **TERMINATION FOR CONVENIENCE**. The City reserves the right to terminate the Agreement in whole or part by giving Contractor written notice at least thirty (30) days prior to effective date of termination. Upon receipt of termination from the City, the Contractor shall only provide those services specifically approved or directed by the City. All other rights and duties of the Parties under the Agreement shall continue during such notice period, and the City shall continue to be responsible to the Contractor for the payment of any obligation to the

extent such responsibility has not been excused by breach or default of the Contractor.

Upon termination, Contractor shall bill the City for all amounts not previously billed and due to the Contractor at that time. Contractor shall not be entitled to a profession fee nor expenses for any work commenced or expenses incurred after the notice of termination was received by the Contractor, unless specifically approved or requested by the City. Contractor shall, however, be entitled to payment for services commenced and approved by the City prior to receipt of notice, or with the expressed written consent of the City, prior to the effective date of termination.

- 14. TERMINATION FOR CAUSE.** If the City wishes to terminate the Agreement for cause due to the failure of Contractor to perform as required under this Agreement and/or in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, then the City must provide the Contractor with written notice of said failure to perform. The City must give ten (10) working days from the Contractor's receipt of the Notice to Cure for the Contractor to cure or take reasonable action to commence to cure the performance concerns specified. If Contractor does not take appropriate action within the ten (10) day period, the City may issue a Final Notice to Cure. Contractor will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the City can terminate the Agreement. If the Contractor is terminated for cause, the City may provide or employ any necessary labor and materials in lieu of Contractor to finish part or all of the work under the Agreement or to supplement the work of Contractor, and to deduct the cost thereof from any money, then due or thereafter to become due to the Contractor; and if such cost shall exceed the balance due to Contractor, then the Contractor shall pay the difference to the City.

Notwithstanding the foregoing, CITY may immediately terminate this Agreement, without providing CONTRACTOR with notice of default or opportunity to cure, if CITY determines that CONTRACTOR has failed to comply with any of the terms and conditions of this Agreement related to safety, indemnification or insurance coverage.

Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Agreement by providing written notice to the CONTRACTOR, but without an opportunity to cure, if CITY determines CONTRACTOR knowingly furnished any representation, warranty or certification in connection with the solicitation of CONTRACTOR's bid or this Agreement, which representation was materially false, deceptive, incorrect, or incomplete.

Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Agreement by providing written notice to CONTRACTOR if the State of Florida or the federal government enacts a law, which removes or restricts authority of CITY to conduct all or part of its function.

- 15. WAIVER:** No failure of the City to insist upon strict performance in any one or more terms of this Agreement, nor any failure of the City to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance. Payment after a default shall not be deemed a waiver of any right or acceptance of defective performance.
- 16. HEADINGS AND CAPTIONS:** All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement and may not be used to define, describe, interpret or construe any provision of this Agreement.
- 17. AMENDMENTS.** This Agreement may be altered, amended, extended, modified and/or revised only by a written instrument subsequently executed by the parties to this Agreement.
- 18. SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.
- 19. RECORDS.** All contracts, correspondence, memoranda, and other documents accumulated, acquired, prepared, or received by the parties hereto created by this Agreement shall be maintained as public records to the extent required by law. This Section shall survive termination or expiration of this Agreement.
- 20. CHANGES IN WORK ITEMS OR SCOPE.** The City and the Contractor expressly agree that no changes in materials or description of work shall take place unless in writing and agreed upon by the Contractor and the City. All Change Orders must be approved by the City in accordance with City Purchasing Manual Policies and Procedures before work commences. No changes in the scope of work shall be made by the Contractor unless the Contractor has received a prior written Change Order signed by an authorized representative of the City, except in an emergency where there is danger to life or risk of significant damage to property. The Agreement sum and the Agreement time may be changed only by written change order. No extra costs shall be paid to the Contractor as a result of Contractor's failure to properly evaluate the extent of the rehabilitation work.
- 21. GUARANTEES AND WARRANTIES.** The Contractor shall guarantee to correct any work that fails to conform to this Agreement and shall correct such defects due to faulty materials,

equipment, or workmanship which appear during the progress of the work or within a period of one (1) year from the date of final inspection and acceptance or such longer periods of time as may be specified by law or by the terms of any special guarantees required by this Agreement. All reasonable work to be corrected shall be specified in writing signed by the City and delivered to Contractor at Contractor's place of business. The provisions of this article apply to work done by Sub Contractors as well as work done by the Contractor. Contractor shall furnish the City with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under this Agreement.

- 22. BREACH.** Failure of Contractor or the City to perform the covenants, conditions, or provisions of the Agreement shall constitute a material default and breach of the Agreement. In the event of any default, the City has the right to terminate this Agreement in accordance with the provisions of Paragraph 14 above. In the event of any default of the City, except the payments required under the Agreement, Contractor may terminate this Agreement immediately without notice. If the City fails to timely pay the monies required under this Agreement, it has fifteen (15) days after written notice from Contractor to cure said default, unless the City disputes satisfactory performance of services.
- 23. ATTACHMENTS:** Attachments to this Agreement shall be deemed to be incorporated into this Agreement as if fully set forth verbatim into the body of this Agreement.
- 24. NO THIRD PARTIES BENEFICIARIES.** This Agreement shall inure to the benefit of the Parties to this Agreement and is for the exclusive benefit of said Parties. This Agreement shall not be deemed to be made for the benefit of any other entity or person not so specified, including specifically but not limited to the selected Contractor.
- 25. COMPLIANCE WITH FEDERAL, STATE, COUNTY, AND LOCAL LAWS.** The Parties shall comply with all Federal, State, County and local laws, regulations, ordinances, and health and safety rules and regulations at all times.
- 26. NO WAIVER OF SOVEREIGN IMMUNITY:** Notwithstanding, nothing in this Agreement shall be construed as a waiver by the CITY of its rights to statutory sovereign immunity pursuant to Fla. Stat. §768.28.
- 27. WAVIER OF JURY TRIAL/AWARD OF ATTORNEY'S FEES.** It is mutually agreed by and between the Parties that each of the Parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action, each party shall be responsible for their own attorney's fees, including those incurred in appellate proceedings.

28. PUBLIC RECORDS. The Contractor acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the Contractor shall keep and maintain public records required by the City to perform the service.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this Contract, contact the Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.gov, and 101 Church Street, Kissimmee, Florida 34741.

- a. If the City's Custodian of Records requests records from the Contractor, the Contractor shall provide the City's Custodian of Records with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost charged by the City of Kissimmee, as provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- b. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
- c. Upon completion of the contract, the Contractor shall transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. Unless otherwise directed by the City, all records will be transferred at the conclusion of the Contract.
- d. Upon notice to the Contractor of a request to inspect or copy public records relating to a City's contract for services, the Contractor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- e. If the Contractor does not comply with the City's request for records, such failure shall constitute a material breach and the Contract shall terminate upon notice by the City.
- f. A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10

29. ENTIRE AGREEMENT. This Agreement constitutes the complete, full, and wholly independent agreement among the parties to this Agreement with regard to the matters contained herein. This Agreement also supersedes all prior representation, statements, and understandings among the Parties to this Agreement with respect to the matters and things addressed herein, either written or oral.

Signature page to follow

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed:

CONTRACTOR- GROWNTek.
 By: [Signature]
 Title: Director of Operations
 Date: 5/13/2021

STATE OF FLORIDA
 COUNTY OF Orange

The foregoing instrument was acknowledged before me this 13 day of MAY, 2021, by means of ☒ physical presence or ☐ online notarization, by (name of person) as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



GLEYSIS GESSEN
 Commission # GG 971678
 Expires March 22, 2024
 Bonded Thru Budget Notary Services

Notary: [Signature]
 Print Name: Gleysis Gesen
 My Commission Expires: March 22, 2024

CITY OF KISSIMMEE

Olga Gonzalez, Mayor-Commissioner

Date: _____

Attest:

 City Clerk

Approved as to form & legality

 City Attorney

**GROUNDTEK OF CENTRAL FLORIDA, LLC and
AERO GROUNDTEK, LLC
and
ORANGE COUNTY, FLORIDA**

NOVATION AGREEMENT

This agreement is made and entered into this 12 day of February , 2019, by and between GROUNDTEK OF CENTRAL FLORIDA, LLC ("Transferor"), a corporation duly organized and existing under the laws of the State of Florida with its principal office in Orange County, Florida; AERO GROUNDTEK, LLC ("Transferee"), a limited liability company duly organized under the laws of the State of Delaware with its principal office in Nassau County, New York and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("County").

WITNESSETH:

WHEREAS, the County has entered into certain contracts with the Transferor, as shown on the list attached hereto as **Exhibit A**; and

WHEREAS, the term "Contracts," as used in this agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the County and the Transferor before the effective date of this agreement, and includes all modifications made under the terms and conditions of these contracts and purchase orders between the County and the Transferee, on or after the effective date of this agreement; and

WHEREAS, as of the date set forth above and with the consent of ORANGE COUNTY, the Transferor has transferred to the Transferee certain assets of the Transferor, including the contracts shown on **Exhibit A**, pursuant to that certain Asset Purchase Agreement, (the "Purchase Agreement"), by and among Transferor, GROUNDTEK IRRIGATION LLC, a Florida limited liability company, George L. Bori, Sr., GLB FLORIDA, LLC, a Florida limited liability company, GLB UTAH, LLC, a Utah limited liability company, and Transferee, which Purchase Agreement shall be provided by the Transferor to ORANGE COUNTY subsequent to the date set forth above; and

WHEREAS, Transferee has acquired such assets of the Transferor, including the contracts shown on **Exhibit A**, by virtue of the above transfer; and

WHEREAS, Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer; and

WHEREAS, by execution of this Novation Agreement, Transferee agrees that it shall fully perform and hereunder be liable for all obligations that may exist under the contracts; and

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

1. The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the County that it now has or may have in the future in connection with the Contracts.
2. The Transferee agrees to be bound by and to perform each Contract in accordance with its terms and conditions. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Contracts as if the Transferee were the original party to the Contracts.
3. The Transferee ratifies all previous actions taken by the Transferor with respect to the Contracts, with the same force and effect as if the Transferee had taken the action.
4. The County recognizes the Transferee as the Transferor's successor in interest in and to the Contracts. The Transferee, by this agreement, becomes entitled to all rights, titles, and interests of the Transferor in and to the Contracts as if the Transferee were the original party to the Contracts. Following the effective date of this agreement, the term "Contractor" or "Vendor," as used in the Contracts, shall refer to the Transferee.
5. Except as expressly provided in this agreement, nothing in it shall be construed as a waiver of any rights of the County against the Transferor.
6. All payments previously made by the County to the Transferor, and all other previous actions taken by the County under the Contracts, shall be considered to have discharged those parts of the County's obligations under the Contracts. All payments made by the County after the Transferor delivers a copy of the Purchase Agreement in the name of the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the County's obligations under the Contracts to the extent of the amounts paid.
7. Neither the Transferor nor Transferee shall pledge the County's credit or make it a guarantor of payment or surety for any contracts, debt, obligation, judgment, lien, or any form of indebtedness. Transferor and Transferee further warrant and represent that they have no obligations or indebtedness that would impair their ability to fulfill the terms of this agreement.

8. The Transferor and the Transferee agree that the County is not obligated to pay either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this agreement, other than those that the County in the absence of this transfer or this agreement would have been obligated to pay or reimburse under the terms of the Contracts.

9. The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee –

a. Assumes under this agreement; or

b. May undertake in the future should the Contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

10. The Contracts shall remain in full force and effect, except as modified by this agreement. Each party has executed this agreement as of the day and year first above written.

11. The rights and obligations of Transferee and County pursuant to this agreement shall not become effective until the date on which Transferor provides a fully executed copy of the Purchase Agreement to the County. For the avoidance of doubt, if the transactions contemplated by the Purchase Agreement fail to close, this agreement shall be null and void.

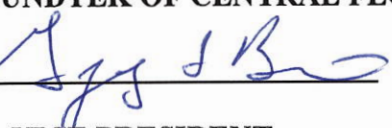
ORANGE COUNTY, FLORIDA

By: 

Title: Zulay Millan, Assistant Manager

Date: April 30, 2020

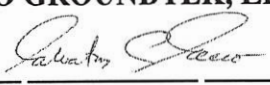
GROUNDTEK OF CENTRAL FLORIDA, LLC

By: 

Title: **VICE PRESIDENT**

Date: 4/30/20

AERO GROUNDTEK, LLC

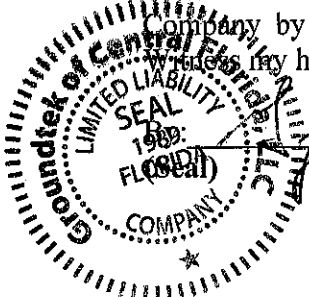
By: 

Title: **CFO**

Date:

CERTIFICATE

I, Gregory Bori, certify that I am duly authorized by the Secretary of GroundTek of Central Florida, LLC, to execute this Certificate on behalf of the Company, LLC, that I, Gregory Bori, who signed this agreement for this corporation, was then the Vice President of GroundTek of Central Florida, LLC; and that this agreement was duly signed for and on behalf of this Company by authority of its governing body and within the scope of its corporate powers. Witness my hand and seal of this Company this day of April 30 2020

**CERTIFICATE**

I, Richard Summers, certify that I am the Secretary of AERO GROUNDTEK, LLC, that Sal Sacco, who signed this agreement for this corporation, was then Chief Financial Officer of this corporation; and that this agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and seal of this corporation this day of April 30 2020

By: _____
(Corporate Seal)

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ORANGE

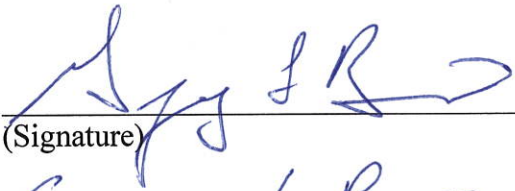
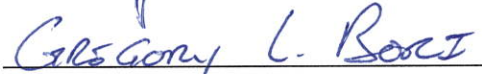
BEFORE ME, the undersigned authority, personally appeared Gregory L Bori who upon being sworn deposed and stated as follows:

1. My name is Gregory L. Bori and I am the authorized agent of Groundtek of Central Florida, LLC ("Transferor") in the position of Vice President. I have signed this affidavit for the Transferor and certify that this affidavit was duly signed for and on behalf of the Transferor by authority of its governing body and within the scope of its corporate powers. I have personal knowledge of the matters stated in this affidavit. I am above the age of 18 years.

2. The Transferor has entered into subcontracts with subcontractors and/or suppliers under the "Contracts," as this term is used in the Novation Agreement entered into on April 30, 2020 by and between the Transferor, Transferee, Aero Groundtek, LLC and Orange County, Florida.

3. Among said subcontractors and/or suppliers, the following one(s) have either not been paid or have been partially paid for their goods and/or services under the Contracts:
NONE.

FURTHER AFFIANT SAYETH NOT.


(Signature)

(Printed Name)

STATE OF FLORIDA
COUNTY OF ORANGE

SWORN TO AND SUBSCRIBED before me this 30 day of Apr, 2000 by Eregony Bon, who is ☒ personally known to me or ☐ produced MA as identification:

(NOTARY SEAL)



DOROTHY MONICA WILDER
Commission # GG 271713
Expires February 15, 2023
Bonded Thru Budget Notary Services

Dorothy Wilder
Notary Public Signature

Dorothy Wilder
(Name typed, printed or stamped)
Notary Public, State of Florida
Commission No.: GG 271713
My Commission Expires: 2/15/23

ESTOPPEL CERTIFICATE

To: AERO GROUNDTEK, LLC

Re: Contract Name(s): See attached Exhibit A

Contract Date(s): See attached Exhibit A

Between: GroundTek of Central Florida, LLC and Orange County, Florida

Gentlemen:

The undersigned, GroundTek of Central Florida ,LLC, a limited liability company duly organized and existing under the laws of the State of Florida ("Transferor"), has or is about to transfer certain assets, including the contracts identified on **Exhibit A** hereto, to Aero GroundTek, LLC a limited liability company duly organized and existing under the laws of the State of Delaware ("Transferee"). Orange County, Florida ("County") has entered into certain contracts with the Transferor, namely those contracts identified on **Exhibit A** hereto. The term "Contracts," as used in this certificate, means those contracts and purchase orders set forth in **Exhibit A** hereto and all other contracts and purchase orders, including all modifications made between the County and the Transferor before the date hereof. The County has requested that the Transferor deliver this Estoppel Certificate to the Transferee. The Transferor, as a party to the Contracts, hereby certifies to the Transferee, it successors, and assigns, as of the date hereof as follows:

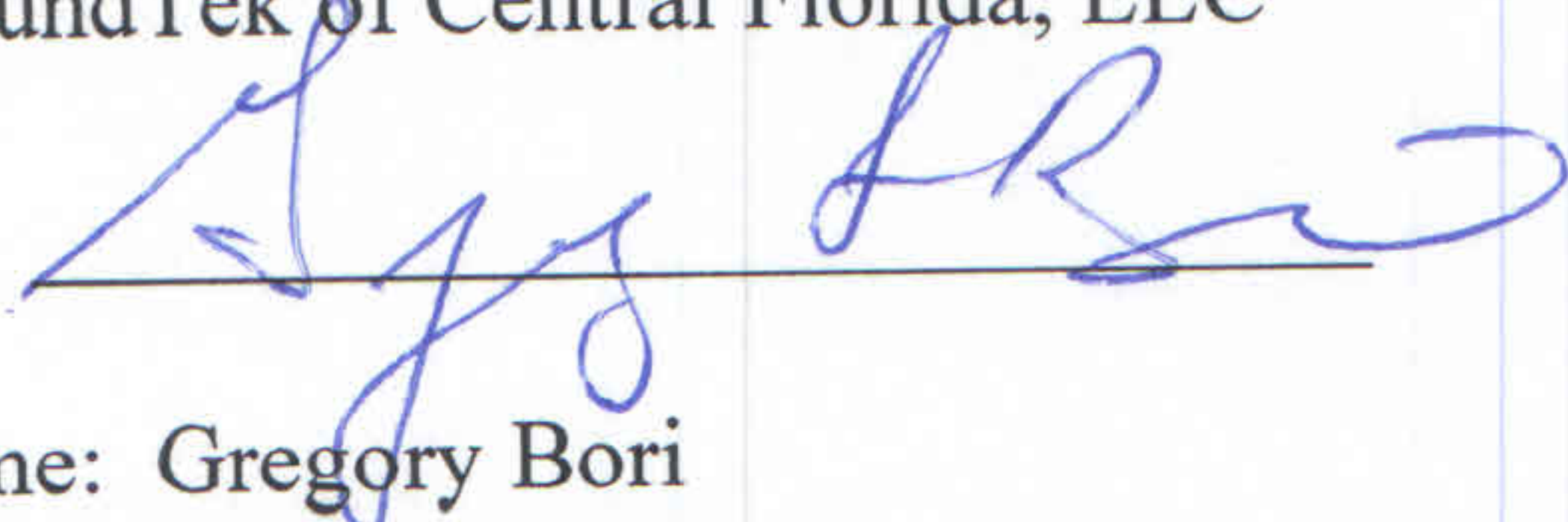
1. The Contracts (including any amendments to those contracts) are in full force and effect. The Contracts have not been amended, modified or supplemented, except as follows:
None.
2. The amount the County or Transferor has paid or is currently paying under the Contracts is as per the terms set forth in the contracts.
3. The commencement date of the Contracts will be after execution of the novation agreement, and subject to such further terms as set forth therein.
4. No default on the part of Transferor or County exists under the Contracts. No event that with the giving of notice or the passage of time, or both, that would constitute a default by Transferor or County under the Contracts has occurred. The County has no offset, defense, deduction or claim against Transferor.
5. The County has not assigned, sublet or transferred its interest in the Contracts, or any part thereof.
6. No bankruptcy or insolvency proceedings are pending by or against the County.

7. There is no outstanding material dispute of any nature between the County and the Transferor with respect to the Contracts.

The statements contained herein may be relied upon by Transferee and Transferee's assigns. The undersigned person hereby certifies that he or she is duly authorized to execute and deliver this Estoppel Certificate on behalf of Transferor.

DATED this 30 day of April, 2020.

TRANSFEROR
GroundTek of Central Florida, LLC

By: 

Name: Gregory Bori

Title: Vice President

CONTRACT # Y19-1131

This Contract is made as of the **2nd** day of **December, 2019** by and between Orange County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the COUNTY, and Groundtek Of Central Florida, LLC, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. is 59-2981065. This contract is subject to change based on guidance from the Federal funding source.

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide professional/consultation services in the area of LANDSCAPE MANAGEMENT AND IRRIGATION AT THE ORANGE COUNTY CONVENTION CENTER, as more specifically set forth in the Scope of Services detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Liz Frias, telephone no. 407-685-5854.

ARTICLE 2 SCHEDULE

The CONTRACTOR shall commence services on December 2, 2019 and complete all services by December 1, 2022.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

This contract may be renewed, for two (2) additional one (1) year periods upon mutual written agreement of the parties at the same prices, terms and conditions. Any change in price, terms or conditions shall be accomplished by written amendment to this contract.

Any order issued during the effective date of this contract, but not completed within that period, shall be completed by the CONTRACTOR within the time specified in the order. The contract shall govern the CONTRACTOR and the COUNTY'S rights and obligations with respect to the extent as if the order were completed during the contract's performance period.

ARTICLE 3 PAYMENTS TO CONTRACTOR (USE FOR TERM CONTRACT)

- A. The total amount to be paid by the COUNTY under this Contract for the base period, shall not exceed SEVEN MILLION, SEVEN HUNDRED FORTY EIGHT THOUSAND AND FOUR HUNDRED Dollars (\$7,748,400). The CONTRACTOR will notify the COUNTY, in writing, when 90% of the estimated contract amount has been reached. The CONTRACTOR will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Services. Where incremental billing for partially completed items is permitted, the total incremental billings shall not exceed the percentage of estimated completion as of the billing date.
- B. Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the initiating County Department, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment.

Invoices will be paid in accordance with the State of Florida Local Government Prompt Payment Act.

A valid invoice shall include the following:

1. Reference to the Delivery Order Number
2. Delivery Dates/ Service Dates
3. Itemization of Goods Delivered/ Services Rendered
4. Unit Prices in accordance with Exhibit "A"
5. Back up documentation as required

C. Final Invoice: In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/last billing to the COUNTY. This certifies that all services have been properly performed and all charges and costs have been invoiced to Orange County. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR.

ARTICLE 4 REQUIREMENTS CONTRACT

This is a Requirements Contract and the COUNTY shall order from the CONTRACTOR all of the supplies and/or services specified in the contract's price schedule that are required to be purchased by the COUNTY. If the COUNTY urgently requires delivery of goods or services before the earliest date that delivery may be required under this contract, and if the CONTRACTOR will not accept an order providing for accelerated delivery, the COUNTY may acquire the goods or services from another source.

Except as this contract may otherwise provide, if the COUNTY'S requirements do not result in orders in the quantities described as "estimated" in the contract's price schedule, that fact shall not constitute the basis for an equitable adjustment.

ARTICLE 5 INSURANCE REQUIREMENTS

Vendor/Contractor agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor/Contractor is not intended to and shall not in any manner limit or qualify the liabilities assumed by Vendor/Contractor under this contract. Vendor/Contractor is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.

The Vendor/Contractor shall require and ensure that each of its sub-Vendors/sub-Contractors providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better.

(Note: State licenses can be checked via www.flair.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com)

Required Coverage:

- ☒ Commercial General Liability - The Vendor/Contractor shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than **\$1,000,000** (one million dollars) per occurrence. Vendor/Contractor further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

Required Endorsements:

- ☒ Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations
- ☒ Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.
Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.
- ☒ Business Automobile Liability - The Vendor/Contractor shall maintain coverage for all owned; non-owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than **\$1,000,000** (one million dollars) per accident. In the event the Vendor/Contractor does not own automobiles the Vendor/Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Required Endorsements:

- ☒ Workers' Compensation - The Vendor/Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Any Vendor/Contractor using an employee leasing company shall complete the Leased Employee Affidavit.

Required Endorsements:

- ☒ Waiver of Subrogation- WC 00 03 13 or its equivalent
- ☒ Pesticide Herbicide Application Liability- with a limit of not less than \$1, 000,000 per occurrence/claim
OR
- ☒ Pollution Liability- with a limit of not less than \$1,000,000 per occurrence/claim

When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of Vendor/Contractor most recent annual report or audited financial

statement. For policies written on a "Claims-Made" basis the Vendor/Contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the Vendor/Contractor agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the Vendor/Contractor of the obligation to provide replacement coverage.

By entering into this contract Vendor/Contractor agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the County for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit the Vendor/Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Vendor/Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

Prior to execution and commencement of any operations/services provided under this contract the Vendor/Contractor shall provide the COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the Vendor/Contractor shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the Orange County Board of County Commissioners.

For continuing service contracts renewal certificates shall be submitted immediately upon request by either the COUNTY or the COUNTY's contracted certificate compliance management firm. The certificates shall clearly indicate that the Vendor/Contractor has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. Vendor/Contractor shall notify the COUNTY not less than thirty (30) business days (ten business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The Vendor/Contractor shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to the COUNTY or its certificate management representative five (5) business days prior to the effective date of the replacement policy (ies).

The certificate holder shall read:

Orange County Board of County Commissioners
c/o Procurement Division
400 E. South Street, 2nd Floor
Orlando, Florida 32801

ARTICLE 6 INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the CONTRACTOR or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the COUNTY.

ARTICLE 7 FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employee FICA and Social Security benefits with respect to this Contract.

ARTICLE 8 AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners, or other specified funding source for this procurement.

ARTICLE 9 CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes 112.311. The CONTRACTOR further represents that no person having any interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of the notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

ARTICLE 10 UNIFORM COMMERCIAL CODE

The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the CONTRACTOR and the COUNTY for any terms and conditions not specifically stated in this Contract.

ARTICLE 11 TERMINATION**A. Termination for Default:**

The COUNTY may, by written notice to the CONTRACTOR, terminate this contract for default in whole or in part (delivery orders, if applicable) if the CONTRACTOR fails to:

1. Provide products or services that comply with the specifications herein or fails to meet the COUNTY'S performance standards
2. Deliver the supplies or to perform the services within the time specified in this contract or any extension.
3. Make progress so as to endanger performance of this contract
4. Perform any of the other provisions of this contract.

Prior to termination for default, the COUNTY will provide adequate written notice to the CONTRACTOR through the Manager, Procurement, affording them the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CONTRACTOR in accordance with the County's Procurement Ordinance. The CONTRACTOR and its sureties (if any) shall be liable for any damage to the COUNTY resulting from the CONTRACTOR's default of the contract. This liability includes any increased costs incurred by the COUNTY in completing contract performance.

In the event of termination by the COUNTY for any cause, the CONTRACTOR will have, in no event, any claim against the COUNTY for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONTRACTOR shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work as directed by the COUNTY.
4. Continue and complete all parts of that work that have not been terminated.

Neither CONTRACTOR nor COUNTY shall be liable, nor may cancel this contract for default, when delays arise out of causes beyond the control of CONTRACTOR or COUNTY. Such causes may include but are not restricted to acts of God, acts of COUNTY in sovereign capacity, fires, floods, lightning strikes, epidemics, quarantine restrictions, strikes, freight embargoes, wars, civil disturbances, work stoppage, power failures, laws, regulations, ordinances, acts or orders of any governmental agency or official thereof, and unusually severe weather. In every case, the delay must be beyond the control of the claiming party. If CONTRACTOR is delayed in its performance as a result of the above causes, COUNTY, shall upon written request of CONTRACTOR, agree to equitably adjust the provisions of this contract, including price and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit COUNTY'S right to terminate for convenience.

B. Termination for Convenience

The COUNTY, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If this contract is terminated, the COUNTY shall be liable only for goods or services delivered and accepted. The COUNTY Notice of Termination shall provide the CONTRACTOR thirty (30) days prior notice before it becomes effective. **A termination for convenience may apply to individual delivery orders, purchase orders or to the contract in its entirety.**

1. **FORCE MAJEURE - EMERGENCY RESPONSE CONTRACTS**

The Contractor shall not be held responsible for any delay and/or failure in performance of any part of this contract to the extent such delay or failure is caused by explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond the Contractor's control so long as the Contractor's delay is not caused by the Contractor's own fault or negligence. That notwithstanding, the Contractor shall notify the County in writing within forty-eight (48) hours after the beginning of any such cause that would affect its performance hereunder and the County reserves the right the request additional information that supports the validity of the Contractor's Force Majeure claim. Failure to notify the County in a timely manner of any claim of Force Majeure made pursuant to this section is cause for termination of this contract.

2. If the Contractor's performance is delayed pursuant to this section for a period exceeding ten (10) calendar days from the date the County receives the required Force Majeure notice, the County shall have the right to terminate this contract thereafter and shall only be liable to the Contractor for any work performed and validated (if required for payment hereunder) prior to the date of the County's contract termination.
3. **As the nature of this contract relates to emergency and/or natural disaster response (including, but not limited to, hurricanes), the Contractor is expected, as part of the Contractor's obligations hereunder, to be mobilized and prepared to perform immediately after a natural disaster emergency and/or event. As a result, delays and/or failures in performance on the Contractor's part that are in any way related to natural disaster conditions (ie: fuel shortages, airport closures, lodging shortages, etc.) shall not be considered valid claims of Force Majeure under this section.**
4. If the Contractor's performance is delayed pursuant to this section, the County may, upon written request of the Contractor, agree to equitably adjust the provisions of this contract, including price, performance, and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit the County's right to terminate for convenience.

ARTICLE 12 PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereafter shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. The COUNTY may require, in writing, that the CONTRACTOR remove from this contract any employee the COUNTY deems incompetent, careless, or otherwise objectionable.

ARTICLE 13 TRUTH IN NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall act as the execution of the truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside Contractors. The COUNTY shall exercise its right under this "Certificate" within one (1) year following final payment.

ARTICLE 14 ARREARS

The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 15 DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the COUNTY, or at its expense, will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced at the discretion of the COUNTY.

The COUNTY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 16 INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and

control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than as specifically provided for in this Agreement.

ARTICLE 17 CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retrained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract 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 CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 18 ACCESS AND AUDITS

The CONTRACTOR shall establish and maintain a reasonable accounting system, which enables ready identification of CONTRACTOR'S cost of goods and use of funds. Such accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of this contract. The COUNTY or its designee shall have access to such books, records, subcontract(s), financial operations, and documents of the CONTRACTOR or its sub-Contractors as required to comply with this section for the purpose of inspection or audit anytime during normal business hours at the CONTRACTOR'S place of business. This right to audit shall include the CONTRACTOR'S sub-Contractors used to procure goods or services under the contract with the COUNTY. CONTRACTOR shall ensure the COUNTY has these same rights with sub-Contractor(s) and suppliers.

ARTICLE 19 EQUAL OPPORTUNITY

It is hereby declared that equal opportunity and nondiscrimination shall be the County's policy intended to assure equal opportunities to every person, regardless of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-314 of the Orange County Code and the County Administrative Regulations.

Further, the CONTRACTOR shall abide by the following provisions:

- A. The CONTRACTOR shall represent that the CONTRACTOR has adopted and maintains a policy of nondiscrimination as defined by applicable County ordinance throughout the term of this contract.
- B. The CONTRACTOR shall allow reasonable access to all business and employment records for the purpose of ascertaining compliance with the non-discrimination provision of the contract.
- C. The provisions of the prime contract shall be incorporate by the CONTRACTOR into the contracts of any applicable subcontractors.

ARTICLE 20 SCRUTINIZED COMPANIES

- A. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes.
- B. Specifically, by executing this Agreement, the Contractor certifies that it is **not** on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
- C. Additionally, if this Agreement is for an amount of one million dollars (\$1,000,000) or more, by executing this Agreement, the Contractor certifies that it is **not**:
 - 1. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473, Florida Statutes; and/or
 - 2. Engaged in business operations in Cuba or Syria.
- D. The County reserves the right to terminate this Agreement immediately should the Contractor be found to:
 - 1. Have falsified its certification of eligibility to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes; and/or
 - 2. Have become ineligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the County.
- E. If this Agreement is terminated by the County as provided in subparagraph 4(a) above, the County reserves the right to pursue any and all available legal remedies against the Contractor, including but not limited to the remedies as described in Section 287.135, Florida Statutes.
- F. If this Agreement is terminated by the County as provided in subparagraph 4(b) above, the Contractor shall be paid only for the funding-applicable work completed as of the date of the County’s termination.
- G. Unless explicitly stated in this Section, no other damages, fees, and/or costs may be assessed against the County for its termination of the Agreement pursuant to this Section.

ARTICLE 21 MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY’S notification of a contemplated change, the CONTRACTOR shall (1) if requested by COUNTY, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY in writing if the contemplated change shall affect the CONTRACTOR’S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall issue a Contract Amendment or Change Order and the CONTRACTOR shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 22 CONTRACT CLAIMS

"Claim" as used in this provision means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

Claims made by a Contractor/Contractor against the County relating to a particular contract shall be submitted to the Procurement Manager in writing clearly labeled "Contract Claim" requesting a final decision. The Contractor also shall provide with the claim a certification as follows: "I certify that the claim is made in good faith;

that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor/Contractor believes the County is liable; and that I am duly authorized to certify the claim on behalf of the Contractor/Contractor."

Failure to document a claim in this manner shall render the claim null and void. Moreover, no claim shall be accepted after final payment of the contract.

The decision of the Procurement Manager shall be issued in writing and shall be furnished to the Contractor/Contractor. The decision shall state the reasons for the decision reached. The Procurement Manager shall render the final decision within sixty (60) days after receipt of Contractor's/Contractor's written request for a final decision. The Procurement Manager's decision shall be final and conclusive.

The Contractor/Contractor shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal or action arising under the contract and shall comply with any final decision rendered by the Manager of Procurement.

ARTICLE 23 TOBACCO FREE CAMPUS

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to contractors and their personnel during contract performance on county-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

ARTICLE 24 VERIFICATION OF EMPLOYMENT STATUS

Prior to the employment of any person under this contract, the contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of (a) all persons employed during the contract term by the contractor to perform employment duties within Florida and (b) all persons, including subcontractors, assigned by the contractor to perform

work pursuant to the contract with Orange County. Please refer to USCIS.gov for more information on this process.

Only those employees determined eligible to work within the United States shall be employed under the contract.

Therefore, by submission of a bid or proposal in response to this solicitation, the contractor confirms that all employees in the above categories will undergo e-verification before placement on this contract. The contractor further confirms his commitment to comply with this requirement by completing the E- Verification certification.

ARTICLE 25 LAWS AND REGULATIONS

All applicable Federal and State laws, municipal and County ordinances shall apply to the solicitation and Contract.

ARTICLE 26 PRICE ESCALATION/DE-ESCALATION (CPI)

The County may allow a price escalation provision within this award. The original contract prices shall be firm for the entirety of the initial (3 year) contract period. A price escalation/de-escalation will be considered at the time of contract renewal and at renewal intervals thereafter, provided the Contractor notifies the County, in writing, of the pending price escalation/de-escalation a minimum of sixty (60) days prior to the contract renewal date. Price adjustments shall be based on the latest version of the Consumers Price Index (CPI-U) for All Urban Consumers, All Items, U.S. City Average, non-seasonal, as published by the U.S. Department of Labor, Bureau of Labor Statistics. This information is available at www.bls.gov.

Price adjustment shall be calculated by applying the simple percentage model to the CPI data. This method is defined as subtracting the base period index value (at the time of initial award) from the index value at time of calculation (latest version of the CPI published as of the date of request for price adjustment), divided by the base period index value to identify percentage of change, then multiplying the percentage of change by 100 to identify the percentage change. Formula is as follows:

$$\text{Current Index} - \text{Base Index} / \text{Base Index} = \% \text{ of Change}$$

$$\% \text{ of Change} \times 100 = \text{Percentage Change}$$

CPI-U Calculation Example:

CPI for current period	232.945
Less CPI for base period	229.815
Equals index point change	3.130
Divided by base period CPI	229.815
Equals	0.0136
Result multiplied by 100	0.0136 x 100
Equals percent change	1.4%

A price increase may be requested only at each time interval specified above, using the methodology outlined in this section. To request a price increase, Contractor shall submit a letter stating the percentage amount of the requested increase and adjusted price to the Orange County Procurement Division. The letter shall include the complete calculation utilizing the formula above, and a copy of the CPI-U index table used in the calculation. The maximum allowable increase shall not exceed 4%, unless authorized by the Manager, Procurement Division. If approved, the price adjustment shall become effective on the contract renewal date. All price adjustments must be accepted by the Manager, Procurement Division and shall be memorialized by written amendment to this contract. No retroactive contract price adjustments will be allowed.

Should the CPI-U for All Urban Consumers, All Items, U.S City Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics decrease during the term of the contract, or any renewals, the Contractor shall notify the Orange County Procurement Division of price decreases in the method outlined above. If approved, the price adjustment shall become effective on the contract renewal date. If the Contractor fails to pass the decrease on to the County, the County reserves the right to place the Contractor in default, cancel the award, and remove the Contractor from the County Vendor List for a period of time deemed suitable by the County. In the event of this occurrence, the County further reserves the right to utilize any options as stated herein.

ARTICLE 27 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

By executing this contract Respondent affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

ARTICLE 28 SUB-CONTRACTING AND COMPLIANCE WITH 2 CFR §200.321 (OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS)

If the CONTRACTOR wishes to engage in sub-contracting, pursuant to this Acknowledgment, the CONTRACTOR understands that it must first: (1) get written permission from the COUNTY'S Procurement Manager or their designee to enter into such a subcontract; and (2) execute an affidavit stating that the CONTRACTOR took the "Five Affirmative Steps" regarding Small and Minority Business Enterprise, Women Business Enterprises, and Labor Surplus Area Firms as required by the Federal Government in the solicitation and selection of such subcontractor. **Engaging in sub-contracting, pursuant to this Acknowledgment without complying with both of these requirements is strictly prohibited.**

Small and minority-owned, women-owned business enterprises, and labor surplus area firms shall not be exempt from complying with the "affirmative steps" outlined in 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) when sub-contracting.

ARTICLE 29 FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS.

By executing this contract the Respondent affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

ARTICLE 30 BUSINESS ASSOCIATE AGREEMENT

The Business Associate Agreement attached hereto shall govern all matters necessary to enforce the provisions of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164 as applicable to this contract.

ARTICLE 31 ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- A. The contractor agrees to provide Orange County, the State of Florida, the Federal Emergency Management Agency (FEMA) Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

ARTICLE 32 DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

ARTICLE 33 COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS)

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE 34 NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

ARTICLE 35 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**ARTICLE 36 CONDITIONS FOR EMERGENCY/HURRICANE OR DISASTER -
TERM CONTRACTS**

It is hereby made a part of this contract that before, during and after a public emergency, disaster, hurricane, flood, or other acts of God that Orange County shall require a "first priority" basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public health and safety, as determined by the County. Contractor agrees to rent/sell/lease all goods and services to the County or other governmental entities as opposed to a private citizen, on a first priority basis. The County expects to pay contractual prices for all goods or services required during an emergency situation. Contractor shall furnish a twenty-four (24) hour phone number in the event of such an emergency.

**ARTICLE 37 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND
REQUIREMENT TO INFORM EMPLOYEES OF
WHISTLEBLOWER RIGHTS (APR 2014)**

- A. This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- B. The Subrecipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- C. The Subrecipient shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed thirty-five thousand dollars (\$35,000) in value.

ARTICLE 38 ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the Parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any litigation that arises either directly, or indirectly.

ARTICLE 39 JURY WAIVER

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement.

ARTICLE 40 GOVERNING LAW AND VENUE

Any and all legal actions associated with this contract will be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be in the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.

ARTICLE 41 NO REPRESENTATIONS

Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither

party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

ARTICLE 42 AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to, conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

ARTICLE 43 SEVERABILITY

The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependencies a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

ARTICLE 44 SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONTRACTOR.

ARTICLE 45 REMEDIES

This Contract shall be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be the Circuit Court in and for Orange County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or at equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 46 ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, deleted, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 47 NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Orange County Board of County Commissioners
Procurement Division
Internal Operations Center II
400 East South Street
Orlando, FL 32801

and if sent to the CONTRACTOR shall be mailed to:

GROUNDTEK
858 MAGUIRE RD.
OCOCHEE, FL 34761

ARTICLE 48 ATTACHMENTS

The following attachment(s) is/are attached hereto, and made a part of this Contract in order of precedence:

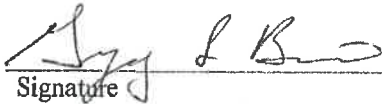
- A. Exhibit A – Fee Schedule
- B. Attachment 1 – LEED EB + OM Certification Documents
- C. Attachment 2 – OCCC Landscaping Samples – 4 Star Quality
- D. Attachment 3 – Site Maps

IN WITNESS WHEREOF, the Board of County Commissioners of Orange County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

CONTRACTOR:

GROUNATEK

Company Name



Signature

GREGORY L. BORI

Typed Name

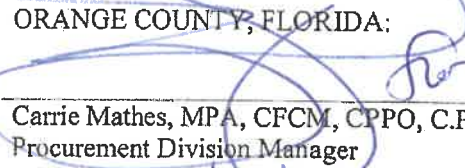
VICE PRESIDENT

Title

11/19/19

Date

ORANGE COUNTY, FLORIDA:


Carrie Mathes, MPA, CFCM, CPPO, C.P.M.,
Procurement Division Manager

Date

11/22/19

EXHIBIT A**FEE SCHEDULE FORM
RFP#Y19-1131-AV**

The Contractor shall provide all labor, equipment, manpower and other resources necessary to provide the goods and services in strict accordance with the scope of services, specifications defined in this solicitation for the amounts specified in this Fee Schedule Form.

The following items 1-24, shall not be used in the event the County requests services associated with a declared emergency as defined by the Federal Emergency Management Agency.

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
EXTERIOR LANDSCAPE SERVICE						
1.	EXTERIOR LANDSCAPE SERVICE (Service is to include mowing, weeding, edging, shrub trimming, weed-wacking, trimming, annual and bromeliad replacement, watering of urns, trash removal, etc.)	12 MONTHS	X \$ <u>66,925.⁰⁰ /MO</u>	= \$ <u>803,100</u> /YR	X 3	= \$ <u>2,409,300</u>
2.	ANNUAL PRUNING OF CREPE MYRTLES	1 YEAR	X \$ <u>7,000</u> /YR	= \$ <u>7,000</u> /YR	X 3	= \$ <u>21,000</u>
3.	MULCH	2500 CU YD PER YEAR	X \$ <u>50.⁰⁰ /CU YD</u>	= \$ <u>125,000</u> /YR	X 3	= \$ <u>375,000</u>
4.	LABOR HOURS FOR ADDITIONAL WORK (move plants/trees/shrubs, removal of old beds, creation of new beds, etc).	3000 HOURS PER YEAR	X \$ <u>29.⁰⁰ /HR</u>	= \$ <u>87,000</u> /YR	X 3	= \$ <u>261,000</u>

Company Name:

GroundTek of Central Florida

FEE SCHEDULE FORM (CONTINUED)**REPLACEMENT PLANTING**

For materials and plants sizes not listed, the Betrock's Plant Finder's Guide (betrock.com) shall be referenced for any additional plants/materials requirements.

Annual estimated dollars of Plants/Materials plus percentage markup from cost using the latest edition of Betrock's Plant Finders Guide:

ITEM NO.	YEARLY AMOUNT		UNIT PRICE (PERCENT)		YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
5.	\$150,000	X	1.2 %	=	\$180,000 YR	X 3	= \$ 540,000
(Example: If the mark-up is <u>10%</u> your total should be $150,000.00 \times 1.10 = \$165,000.00 \times 3 = \$495,000$)							

INSTALLATION FEE

Used for plants selected from Betrock's Plant Finders Guide (Price to include removal of old plants. All sizes below will need to include plant cost, delivery, and installation):

ITEM NO.	CONTAINER SIZE IN GALLONS	ESTIMATED QUANTITY	UNIT PRICE		YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
6.	ONE GALLON	15,000	X \$ 6.00 /EA	=	\$90,000 YR	X 3	= \$ 270,000
7.	THREE GALLON	12,000	X \$ 15.00 /EA	=	\$180,000 YR	X 3	= \$ 540,000
8.	SEVEN GALLON	3,000	X \$ 45.00 /EA	=	\$135,000 YR	X 3	= \$ 405,000
9.	TEN GALLON	500	X \$ 4.00 /EA	=	\$2,000 YR	X 3	= \$ 6,000
10.	FIFTEEN GALLON	500	X \$ 80.00 /EA	=	\$40,000 YR	X 3	= \$ 120,000

Company Name: GROUNDTEK OF CENTRAL FLORIDA

FEE SCHEDULE FORM (CONTINUED)

Installation Fee continued

ITEM NO.	CONTAINER SIZE IN GALLONS	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
11.	THIRTY GALLON	350 X	\$ <u>290.00</u> /EA =	\$ <u>101,500</u> /YR	X 3	= \$ <u>304,500</u>
12.	FORTY-FIVE GALLON	350 X	\$ <u>490.00</u> /EA =	\$ <u>171,500</u> /YR	X 3	= \$ <u>514,500</u>
13.	SIXTY-FIVE GALLON	100 X	\$ <u>4.00</u> /EA =	\$ <u>400</u> /YR	X 3	= \$ <u>1,200</u>
14.	ONE-HUNDRED GALLON	100 X	\$ <u>4.00</u> /EA =	\$ <u>400</u> /YR	X 3	= \$ <u>1,200</u>
15.	TWO-HUNDRED GALLON	75 X	\$ <u>4.00</u> /EA =	\$ <u>300</u> /YR	X 3	= \$ <u>900</u>
16.	THREE-HUNDRED GALLON	150 X	\$ <u>4.00</u> /EA =	\$ <u>600</u> /YR	X 3	= \$ <u>1,800</u>
17.	ANNUALS	10,000 X	\$ <u>2.00</u> /EA =	\$ <u>20,000</u> /YR	X 3	= \$ <u>60,000</u>
18.	BROMELIADS	500 X	\$ <u>20.00</u> /EA =	\$ <u>10,000</u> /YR	X 3	= \$ <u>30,000</u>

IRRIGATION SERVICES

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
19.	IRRIGATION INSPECTIONS & REPORTS	12 MONTHS X	\$ <u>5,900</u> /MO =	\$ <u>70,800</u> /YR	X 3	= \$ <u>212,400</u>

Company Name:

Groundtek of Central Florida

FEE SCHEDULE FORM (CONTINUED)

Irrigation Services Continued

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED BID
20.	SPRINKLER HEAD AND POP-UP REPAIRS BEYOND THE FLEXIBLE SUPPLY HOSE CONNECTION					\$5,000
21.	IRRIGATION REPAIRS - LABOR FOR ADDITIONAL WORK DURING STANDARD WORKING HOURS	6,500 HRS	X \$ <u>35.⁰⁰ /HR</u>	= \$ <u>227,500</u> /YR	X 3	= \$ <u>682,500</u>
22.	IRRIGATION REPAIRS- LABOR FOR ADDITIONAL WORK DURING NON-STANDARD HOURS	100 HRS	X \$ <u>55.⁰⁰ /HR</u>	= \$ <u>5,500</u> /YR	X 3	= \$ <u>16,500</u>

IRRIGATION MATERIALS

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE (PERCENT)	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED BID
23.	IRRIGATION MATERIALS MARK-UP OVER ACTUAL COST WITH DOCUMENTATION	\$75,000/YR	X <u>1.2</u> %	= \$ <u>90,000</u> /YR	X 3	= \$ <u>270,000</u>
(Example: If the mark-up is <u>10%</u> your calculation should be 75,000.00 X 1.10 = \$82,500.00 Per Year X 3 = \$247,500)						\$227,700
24.	UNFORSEEN FEES (equipment rental, taxes, permits, etc.)					\$50,000

Company Name: GROUNDTEK OF CENTRAL FLORIDA

FEE SCHEDULE FORM (CONTINUED)

EMERGENCY SERVICES

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED BID
(The following items 25-28, shall only be used in the event the County requests services associated with a declared emergency as defined by the Federal Emergency Management Agency and shall not be used with items 1-24)						
25.	EMERGENCY-Labor during standard working hours	5,000 HRS	X \$ <u>29.⁰⁰</u>	= \$ <u>145,000</u> ^{TR}	X 3	= \$ <u>435,000</u>
26.	EMERGENCY – Labor during non-standard working hours	2,500 HRS	X \$ <u>35.⁰⁰</u>	= \$ <u>87,500</u> ^{TR}	X 3	= \$ <u>262,500</u>
27.	EMERGENCY – debris disposal with legible dump tickets, at cost					\$40,000
28.	EMERGENCY – parts, equipment rental, and supplies at cost with back up 3 rd party invoice.					\$40,000

TOTAL ESTIMATED BID (ITEMS 1-28) \$ ~~7,875,300.⁰⁰~~
\$7,748,400

Company Name: GRAVNOTEK OF CENTRAL FLORIDA

PROPOSAL COVER PAGE

Company Name: Groundtek of Central Florida

NOTE: COMPANY NAME MUST MATCH LEGAL NAME ASSIGNED TO TIN NUMBER. CURRENT W9 MUST BE SUBMITTED WITH PROPOSAL.

TIN#: _____ D-U-N-S® # _____

858 Maguire Rd. Ocoee
 (Street No. or P.O. Box Number) (Street Name) (City)

Orange Florida 34761
 (County) (State) (Zip Code)

Contact Person: Gregory Bori

Phone Number: 407-877-7473 Fax Number: 407-877-8670

Email Address: gregory@groundtek.com

EMERGENCY CONTACT

Emergency Contact Person: Gregory Bori

Telephone Number: 407-877-7473 Cell Phone Number: 321-436-9038

Residence Telephone Number: 321-436-9038 Email: gregory@groundtek.com

ACKNOWLEDGEMENT OF ADDENDA

The Proposer shall acknowledge receipt of any addenda issued to this solicitation by completing the blocks below or by completion of the applicable information on the addendum and returning it not later than the date and time for receipt of the proposal. Failure to acknowledge an addendum that has a material impact on this solicitation may negatively impact the responsiveness of your proposal. Material impacts include but are not limited to changes to specifications, scope of work/services, delivery time, performance period, quantities, bonds, letters of credit, insurance, or qualifications.

Addendum No. 1, Date 8/28/2019 Addendum No. _____, Date _____

Addendum No. _____, Date _____ Addendum No. _____, Date _____

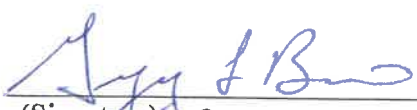
Addendum No. _____, Date _____ Addendum No. _____, Date _____

Addendum No. _____, Date _____ Addendum No. _____, Date _____

AUTHORIZED SIGNATORIES/NEGOTIATORS

The Proposer represents that the following **principals** are authorized to sign proposals, negotiate and/or sign contracts and related documents to which the proposer will be duly bound. Principal is defined as an employee, officer or other technical or professional in a position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Name	Title	Telephone Number/Email
Gregory Bori	Vice President	407-877-7473 gregory@groundtex.com

	9/10/19
(Signature)	(Date)
Vice President	
(Title)	
Groundtex of Central FL	
(Name of Business)	

The Proposer shall complete and submit the following information with the proposal:

Type of Organization

☐ Sole Proprietorship
 ☐ Partnership
 ☐ Non-Profit
☐ Joint Venture*
 ☒ Corporation

(a)

(b) State of Incorporation: Florida

Principal Place of Business (Florida Statute Chapter 607): Orlando / Orange / Florida
 City/County/State

THE PRINCIPAL PLACE OF BUSINESS SHALL BE THE ADDRESS OF THE PROPOSER'S PRINCIPAL OFFICE AS IDENTIFIED BY THE FLORIDA DIVISION OF CORPORATIONS.

Federal I.D. number is: 59-2981065

* Joint venture firms must complete and submit with their Proposal Response the form titled "Information for Determining Joint Venture Eligibility", and a copy of formal written and executed Joint Venture agreement between all joint venture parties. This joint venture agreement must be executed and indicate the parties' respective roles, responsibilities and levels of participation for the project. **If proposing as a Joint Venture, the Joint Venture shall obtain and maintain all contractually required insurance in the name of the Joint Venture as required by the Contract. Individual insurance in the name of the parties to the Joint venture will not be accepted.** Failure to timely submit the required form along with the formal written and executed Joint Venture agreement may result in disqualification of your Proposal Response.

**CERTIFICATION REGARDING LOBBYING FOR CONTRACTS,
GRANTS, LOANS, AND COOPERATIVE AGREEMENTS
APPENDIX A, 44 C.F.R. PART 18**

(To be submitted with each bid or offer exceeding \$100,000)

The following certification and disclosure regarding payments to influence certain federal transactions are made per the provisions contained in 31 U.S.C 1352, the **"Byrd Anti-Lobbying Amendment."**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Grandtex of Central Florida, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.


Signature of Contractor's Authorized Official

Gregory Bari Vice President
Name and Title of Contractor's Authorized Official

9/10/19
Date

**SCHEDULE OF SUBCONTRACTING AND AFFIDAVIT OF COMPLIANCE WITH 2 CFR §200.321 REQUIREMENTS
(OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS)**

Section 1.02 Y19-1131-AV

I, Gregory Bori, in my capacity as Vice President, am authorized to sign on behalf of, and fully bind,
(First and Last Name) (Company Title/Position)

Groundtek of Central Fl (the "Prime Contractor"). Accordingly, on behalf of the Prime Contractor, I swear to, and affirm the following:
(Company Name)

- ✓ Qualified small and minority businesses, and women's business enterprises were, and will continue to be, placed on all of the Prime Contractor's solicitation lists.
- ✓ The Prime Contractor solicited, and will continue to solicit, small and minority businesses, and women's business enterprises, when they were/are potential sources.
- ✓ Based on the Prime Contractor's experience and expertise, the total requirements of the project were, and will continue to be, divided when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- ✓ The Prime Contractor has and/or will establish delivery schedules that will encourage participation of small and minority business, and women's business enterprises.
- ✓ The Prime Contractor has and/or will use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- ✓ I understand that failure to present documentation validating compliance upon request of the County may result in this proposal being deemed non-responsive.
- ✓ I understand that, should the Prime Contractor be awarded the contract that this affidavit will continue to be considered binding for the duration of the project.

Name of Subcontractor (attach additional pages as necessary)	Address	Type of Work to be Performed	Percent and dollar amount of Contract Amount to be Subcontracted
Sterling Silver Scape and Sod	2201 Partin Settlement RD Kissimmee FL	Sodding	
Triple O Nursery Farms Inc	14750 SW 248 St Homestead FL	Supply Plants	

I understand that false statements on this Affidavit of Compliance may result in criminal prosecution for a felony of the third degree as provide for in §92.525(3), Florida Statutes.

[Signature]
SIGNATURE

Gregory Bori
PRINTED NAME

Vice President
OFFICIAL TITLE

9/10/19
DATE

STATE OF Florida

COUNTY OF Orange

 **DOROTHY MONICA WILDER**
Commission # GG 271713
Expires February 15, 2023
Bonded Thru Budget Notary Services

The foregoing instrument was acknowledged before me this
10 day of Sept 2019, by Gregory Bori
on behalf of the corporation.

Personally Known | or Produced Identification |
Type of Identification Produced: N/A

NOTARY
[Signature]
Signature
Dorothy Wilder
Printed Name

NOTE: SMALL AND MINORITY-OWNED, WOMEN-OWNED BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS SHALL NOT BE EXEMPT FROM COMPLYING WITH THE AFFIRMATIVE STEPS OUTLINED IN 2 CFR §200.321 (OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS) FOR SUB-CONTRACTING.

FEDERAL DEBARMENT CERTIFICATION FORM

**Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180.

**(BEFORE COMPLETING CERTIFICATION, READ THE INSTRUCTIONS ON
THE WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)**

- (1) The prospective recipient of Federal assistance funds certifies, by Response, that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Response.

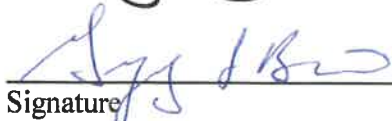
ATTESTATION

By signing this report, I certify to the best of my knowledge and belief that the foregoing is true, complete, and accurate. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Sections 3729-3730 and 3801-3812).

Company Name

Grandtex of Central Florida

Name and Title of Authorized Representative

Gregory Borri Vice President

Signature

9/10/19

Date

FEDERAL DEBARMENT CERTIFICATION FORM (CONTINUED)

Instructions for Certification

1. By signing and submitting this Response, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this Response is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The prospective recipient of Federal assistance funds agrees by submitting this Response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
5. The prospective recipient of Federal assistance funds further agrees by submitting this Response that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**August 28, 2019
BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA
REQUEST FOR PROPOSALS (RFP) Y19-1131-AV; ADDENDUM # 1**

**LANDSCAPE MANAGEMENT AND IRRIGATION AT THE ORANGE COUNTY
CONVENTION CENTER**

This Addendum is hereby incorporated into the bid documents of the project referenced above. The following items are clarifications, corrections, additions, deletions, and/or revisions to and shall take precedence over the original documents. Additions are indicated by **underlining** and deletions via ~~striketrough~~.

A. The Proposal Opening Date remains September 10, 2019 at 2:00PM

B. Questions and Answers

- a. Question:** May we have a container or other space on site for storing equipment and materials?

Answer: Yes, there is a storage area near the Remote Building (North/South Building) that can be used to store equipment/materials. The County will not be liable for any damages, theft, etcetera, that may occur.

- b. Question:** May we consolidate debris on-site and have a roll-off container?

Answer: Yes, the roll-off container may be stored on-site near the designated storage area. However, should the scheduled shows affect that area, the roll-off container will have to be removed. The Contractor is responsible for any and all charges related to the roll-off container, including disposal charges. The County is not liable for any damages, theft, etcetera, that may occur.

- c. Question:** I am interested in submitting a bid for contract Y19-1131-AV, Landscape Management and Irrigation at the Orange County Convention Center. Is there any way I can get the historical data or current contract amount on it?

Answer: Yes, the current contract, Y14-1039, may be found at the following link: <http://apps.ocfl.net/OrangeBids/Termcontracts/listtermcontract.asp>

C. ACKNOWLEDGEMENT OF ADDENDA

- a.** The bidder shall acknowledge receipt of this addendum by completing that applicable section in the solicitation or by completion of the acknowledgement information on the addendum. Either form of acknowledgement must be completed and returned no later than the date and time for receipt of the bid.
- b.** All other terms and conditions of the RFP remain the same.
- c.** Receipt acknowledge by:

Authorized Signature

Date

Title

Name of Firm



NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Orange County, Florida, henceforth referred to as the County is accepting sealed proposals for:

**REQUEST FOR PROPOSALS #Y19-1131-AV, LANDSCAPE MANAGEMENT AND
IRRIGATION AT THE ORANGE COUNTY CONVENTION CENTER
TERM CONTRACT**

Copies of the Request for Proposals (RFP) documents may be obtained from the Orange County Procurement Division at the below address. Copies may be requested by phoning (407) 836-5635 or by download from the Internet at: <http://apps.ocfl.net/orangebids/bidopen.asp>

PROPOSAL SUBMISSION DUE DATE:

Sealed proposals in an **original** and **eight (8) copies** for furnishing the above will be accepted up to **2:00 PM (local time), Tuesday, September 10, 2019**, in the Procurement Division, Internal Operations Centre II, 400 E. South Street, 2nd Floor, Orlando, FL 32801.

PRE-PROPOSALS CONFERENCE:

A **Non-Mandatory Pre-proposal Conference** will be held on **Tuesday, August 20, 2019, 2:30PM**, located at **Orange County Convention Center, 9899 International Drive, Orlando, Florida 32819, South Building, Meeting Room # S230H**. A map and parking pass is included as Attachment 4. Attendance is not mandatory but is encouraged.

A **Non- mandatory walk-through** of specific areas of the Convention Center will be conducted immediately after the Non-Mandatory Pre-proposal Conference on **Tuesday, August 20, 2019** .

NOTICE TO PROPOSERS:

To ensure that your proposal is responsive, you are urged to request clarification or guidance on any issues involving this solicitation before submission of your response. Your point-of-contact for this solicitation is Ana Villalona, Purchasing Agent at Ana.Villalona@ocfl.net.

QUESTIONS:

All questions or concerns regarding this Request for Proposals shall be submitted by email to Ana.Villalona@ocfl.net, no later than 5:00 PM **Friday, August 23, 2019** to the attention of Ana Villalona, Procurement Division, referencing the RFP number.

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
SECTION 1: GENERAL TERMS AND CONDITIONS	1-14
- INSTRUCTION TO PROPOSERS	1
- QUESTIONS REGARDING THIS RFP	1
- CONTRACT TERM	2
- INSURANCE REQUIREMENTS	2-4
- WITHDRAWAL OF PROPOSAL	5
- REFERENCE CHECKS	9
- CONFIDENTIAL INFORMATION	9
- MISTAKES	10
SECTION 2: SPECIFICATIONS/SCOPE OF SERVICES	1-14
SECTION 3: PROPOSAL SUBMISSION REQUIREMENTS AND DOCUMENTATION	1-7
- STATEMENT OF NO PROPOSAL	1
- SEALED RESPONSE SUBMITTAL LABEL	1
- PREREQUISITE REQUIREMENTS	2
- PROPOSAL FORMAT	3-7
SECTION 4: SELECTION CRITERIA	1
SECTION 5: ATTACHMENTS	
- FEE SCHEDULE	1-5
- PROPOSAL COVER PAGE	6
- ACKNOWLEDGEMENT OF ADDENDA	7
- AUTHORIZED SIGNATORIES/NEGOTIATORS	8
- DRUG-FREE WORKPLACE FORM	
- CONFLICT/NON-CONFLICT OF INTEREST FORM	
- E-VERIFICATION CERTIFICATION	
- RELATIONSHIP DISCLOSURE FORM	
- RELATIONSHIP DISCLOSURE FORM - FREQUENTLY ASKED QUESTIONS (FAQ)	
- ORANGE COUNTY SPECIFIC PROJECT EXPENDITURE REPORT	
- EXPENDITURE REPORT- FREQUENTLY ASKED QUESTIONS (FAQ)	
- AGENT AUTHORIZATION FORM	
- LEASED EMPLOYEE AFFIDAVIT	

- INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY
- SCHEDULE OF SUBCONTRACTING AND AFFIDAVIT OF COMPLIANCE WITH 2 CFR §200.321 REQUIREMENTS (OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS)
- CERTIFICATION REGARDING LOBBYING FOR CONTRACTS GRANTS, LOANS, AND COOPERATIVE AGREEMENTS
- FEDERAL DEBARMENT CERTIFICATION FORM
- DRAFT CONTRACT
- ATTACHMENT 1 – LEED EB + OM CERTIFICATION DOCUMENTS
- ATTACHMENT 2 – OCCC LANDSCAPING SAMPLES – 4 STAR QUALITY
- ATTACHMENT 3 – SITE MAPS
- ATTACHMENT 4- PARKING PASS AND MAP

SECTION 1
GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

1. INSTRUCTIONS TO PROPOSERS

Offers by e-mail, telephone, or fax shall not be accepted. An e-mailed or a faxed proposal shall be rejected as non-responsive regardless of where it is received.

It is the sole responsibility of the proposer to ensure that their proposal reaches the Procurement Division. **Proposals received after the specified time and date shall be returned unopened.** The time/date stamp clock located in the Procurement Division shall serve as the official authority to determine lateness of any proposal. **The decision to refuse to consider a proposal that was received beyond the date/time established in the solicitation shall not be the basis for a protest pursuant to the Orange County Code (Procurement Ordinance).**

Respondents are cautioned that they are responsible for delivery to the specific location cited above. If your proposal is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. This office shall not be responsible for deliveries made to any place other than the specified address.

All proposals will be opened publicly and the names of all proposers shall be read aloud.

2. QUESTIONS REGARDING THIS RFP

All questions or concerns regarding this Request for Proposals must be submitted in writing, by email as indicated on the coverage of this RFP, referencing the RFP number. When required the Procurement Division will issue an addendum to the Request for Proposals. The addendum will be available on the Internet for access by potential proposers. Proposers are instructed not to contact the initiating division directly.

Proposers shall not direct any queries or statements concerning their proposal to the Orange County Procurement Committee or County staff during the selection process, from the time of submission of a proposal until the execution of a contract.

Any proposer who initiates any discussions with staff in any manner other than that described below is subject to disqualification from this procurement. **However, you may contact the Purchasing Agent at any time during this process, including during the Black Out Period.**

No oral interpretation of this Request for Proposals shall be considered binding. The County shall be bound by information and statements only when such statements are written and executed under the authority of the Procurement Division Manager.

This provision exists solely for the convenience and administrative efficiency of Orange County. No proposer or other third party gains any rights by virtue of this provision or the application thereof, nor shall any proposer or third party have any standing to sue or cause of action arising there from.

3. CONTRACT TERM

It is the intent of the County to enter into a three (3) year term contract, with renewal clause for two (2) additional one (1) year terms for services as described herein.

4. **DRAFT CONTRACT**

The contract that the County intends to use for award is enclosed for reference. Any exceptions to this standard contract must be clearly indicated by return of the standard contract with the proposal, with exceptions clearly noted. The County has the right to require the selected respondent to sign the attached contract or to negotiate revisions to the contract language prior to execution of the contract, at its sole discretion.

Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

5. **INSURANCE**

Vendor/Contractor agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor/Contractor is not intended to and shall not in any manner limit or qualify the liabilities assumed by Vendor/Contractor under this contract. Vendor/Contractor is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.

The Vendor/Contractor shall require and ensure that each of its sub-Vendors/sub-Contractors providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better.

(Note: State licenses can be checked via www.flor.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com)

Required Coverage:

☒ Commercial General Liability - The Vendor/Contractor shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than **\$1,000,000** (one million dollars) per occurrence. Vendor/Contractor further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

Required Endorsements:

☒ Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations

☒ Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.

Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

☒ Business Automobile Liability - The Vendor/Contractor shall maintain coverage for all owned; non-owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than **\$1,000,000** (one million dollars) per accident. In the event the Vendor/Contractor does not own automobiles the Vendor/Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Required Endorsements:

☒ Workers' Compensation - The Vendor/Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Any Vendor/Contractor using an employee leasing company shall complete the Leased Employee Affidavit.

Required Endorsements:

☒ Waiver of Subrogation- WC 00 03 13 or its equivalent

Additional Required Coverage:

☒ Pesticide Herbicide Application Liability- with a limit of not less than \$1, 000,000 per occurrence/claim

OR

☒ Pollution Liability- with a limit of not less than \$1,000,000 per occurrence/claim

When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of Vendor/Contractor most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the Vendor/Contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the Vendor/Contractor agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the Vendor/Contractor of the obligation to provide replacement coverage.

By entering into this contract Vendor/Contractor agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the County for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit the Vendor/Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Vendor/Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

Prior to execution and commencement of any operations/services provided under this contract the Vendor/Contractor shall provide the COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the Vendor/Contractor shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the Orange County Board of County Commissioners.

For continuing service contracts renewal certificates shall be submitted immediately upon request by either the COUNTY or the COUNTY's contracted certificate compliance management firm. The certificates shall clearly indicate that the Vendor/Contractor has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. Vendor/Contractor shall notify the COUNTY not less than thirty (30) business days (ten business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The Vendor/Contractor shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to the COUNTY or its certificate management representative five (5) business days prior to the effective date of the replacement policy (ies).

The certificate holder shall read:

Orange County, Florida
c/o Procurement Division
400 E. South Street, 2nd Floor
Orlando, Florida 32801

6. POST AWARD MEETING

Within **ten** (10) days after receipt of notification of award, Contractor shall meet with the County's representative(s) to discuss job procedures and scheduling.

7. ACCEPTANCE/REJECTION/CANCELLATION

The County reserves the right to accept or reject any or all proposals, with or without cause, to waive technicalities, or to accept the proposal which, in its sole judgment best serves the interest of the County, or to award a contract to the next most qualified proposer if a successful proposer does not execute a contract within thirty (30) days after approval of the selection by the Board of County Commissioners or other competent authority.

The County also reserves the right to reject the proposal of any proposer who has previously failed in the proper performance of an award or to deliver on time contracts of a similar nature or who, in the County's opinion, is not in a position to perform properly under this award. The County reserves the right to inspect all facilities of proposers in order to make a determination as to the foregoing.

Orange County reserves the right, and the Manager of Procurement Division has absolute and sole discretion, to cancel a solicitation at any time prior to approval of the award by the Board of County Commissioners when such approval is required. The decision to cancel a solicitation cannot be the basis for a protest pursuant to the Orange County Code.

8. DEVELOPMENT OR ASSISTANCE IN DEVELOPMENT OF SPECIFICATIONS/ REQUIREMENTS/ STATEMENTS OF WORK

Firms and/or individuals that assisted in the development or drafting of the specifications, requirements, statements of work, or solicitation documents contained herein are excluded from competing for this solicitation.

This shall not be applicable to firms and/or individuals providing responses to a publicly posted Request for Information (RFI) associated with a solicitation.

9. CLARIFICATION

The County reserves the right to request clarification of information submitted and to request additional information of one or more proposers.

10. WITHDRAWAL OF PROPOSAL

Any proposal may be withdrawn until the date and time set above for the submission of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of one hundred and twenty (120) days, to provide to the County the services set forth in this Request for Proposals, or until one or more of the proposals have been awarded.

11. SEALED PROPOSALS

Proposals shall be delivered in a sealed envelope and proposers should label their proposal with the following:

- A. Request for Proposals Number
- B. Date of Opening
- C. Name of Proposer

Proposers are encouraged to utilize the label provided herein.

12. PROPOSAL PREPARATION

Costs of preparation of a response to this request for proposals are solely those of the Proposer. The County assumes no responsibility for any such costs incurred by the Proposer. The Proposer also agrees that the County bears no responsibility for any costs associated with any administrative or judicial proceedings resulting from the solicitation process.

13. ACCOUNTING SYSTEM

The Contractor shall establish and maintain a reasonable accounting system, which enables ready identification of Contractor's cost of goods and use of funds. The accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of this contract. The County or designee shall have access to books, records, subcontract(s), financial operations, and documents of the Contractor or its subcontractors, as required to comply with this section, for the purpose of inspection or audit anytime during normal business hours at the Contractor's place of business. This right to audit shall include the contractor's subcontractors used to procure goods or services under the contract with the County. Contractor shall ensure the County has these same rights with subcontractor(s) and suppliers.

14. SHORTLISTS, PROTESTS AND LOBBYING

The recommended award will be posted for review by interested parties at the Procurement Division and at: <http://apps.ocfl.net/OrangeBids/AwardsRec/default.asp> prior to submission through the appropriate approval process and will remain posted for a period of five (5) full business days.

Orange County Lobbyist Regulations General Information

<http://www.orangecountyfl.net/OpenGovernment/LobbingAtOrangeCounty.aspx>

A lobbying blackout period shall commence upon issuance of the solicitation until the Board selects the Contractor. For procurements that do not require Board approval, the blackout period commences upon solicitation issuance and concludes upon contract award.

The Board of County Commissioners may void any contract where the County Mayor, one or more County Commissioners, or a County staff person has been lobbied in violation of the black-out period restrictions of Ordinance No. 2002-15.

Orange County Protest Procedures

<http://www.orangecountyfl.net/VendorServices/VendorProtestProcedures.aspx>

Failure to file a protest with the Procurement Manager by 5:00 PM on the fifth full business day, after posting, shall constitute a waiver of bid protest proceedings.

Information regarding Procurement Committee scheduling and Board approvals is available by calling the Procurement Reception Desk at (407) 836-5635.

15. PUBLIC ENTITY CRIME

Section 287.133(3)(d), Florida Statutes, provides that the Florida Department of Management Services shall maintain a list of the names and addresses of those who have been disqualified from participating in the public contracting process under this section.

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list

A person or affiliate who has been placed on The Convicted Vendor list following a conviction for a public entity crime shall not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, shall not submit bids on leases of real property to a public entity, shall not be awarded or perform work as a contractor, supplier, subcontractor, or Contractor under a contract with a public entity, and shall not transact business with any public entity in excess of the threshold amount provided in Florida Statute Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on The Convicted Vendor List.

16. AVAILABILITY OF FUNDS

The obligations of the County under this award are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and the Orange County Board of County Commissioners, or other specified funding source for this procurement.

17. **TOBACCO FREE CAMPUS**

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to contractors and their personnel during contract performance on county-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

18. **VERIFICATION OF EMPLOYMENT STATUS**

Prior to the employment of any person under this contract, the Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the contract term, and an express requirement that Contractors include in such subcontracts the requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. For more information on this process, please refer to United States Citizenship and Immigration Service site at:

<http://www.uscis.gov/portal/site/uscis>.

Only those employees determined eligible to work within the United States shall be employed under the contract.

Therefore, by submission of a proposal in response to this solicitation, the Contractor affirms that all employees in the above categories will undergo e-verification before placement on this contract. The Contractor shall commit to comply with this requirement by completing the E- Verification certification, attached to this solicitation.

19. **NON-DISCRIMINATION**

The County's policies of equal opportunity and non-discrimination are intended to assure equal opportunities to every person, regardless of race, religion, sex, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided and enforced by Section 17-314 of the Orange County Code and the County's relevant Administrative Regulations. It is also the county policy that person(s) doing business with the County shall recognize and comply with this policy and that the County shall not extend public funds or resources in a manner as would encourage, perpetuate or foster discrimination. As such:

1. Contractor shall adopt and maintain, or provide evidence to the County that Contractor has adopted and maintains, a policy of nondiscrimination as defined by Section 17-288, Orange County Code, throughout the term of this Agreement.
2. Contractor agrees that, on written request, the Contractor shall permit reasonable access to all business records or employment, employment advertisement, applications forms, and other pertinent data and records, by the County, for the purpose of investigating to ascertain compliance with the non-discrimination provisions of this contract; provided, that the Contractor shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this Agreement.

3. Contractor agrees that, if any obligations of this contract are to be performed by subcontractor(s), the provisions of subparagraphs 1 and 2 of this Section shall be incorporated into and become a part of the subcontract.

20. CONFLICT OF INTEREST

The award is subject to provisions of applicable State Statutes and County Ordinances. All proposers must disclose with their offer the name of any officer, director, or agent who is also an employee of Orange County. Further, all proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Proposer's firm or any of its branches. Should the Contractor permanently or temporarily hire any County employee who is, or has been, directly involved with the Contractor prior to or during performance of the resulting contract, the contract shall be subject to immediate termination by the County.

21. DEBRIEFING OF PROPOSERS

Not later than thirty (30) days after Board approval of a selection or shortlist, a proposer may submit a written request to the applicable contract administrator or purchasing agent for a debriefing on the evaluation of their proposal. The contract administrator/purchasing agent will schedule a meeting with the Proposer for the debriefing. However, at the Proposer's request, the debriefing may be conducted via telephone conference. The debriefing shall include the following minimum information:

- A. Key requirements of the solicitation.
- B. The overall ranking of all proposals.
- C. The significant weaknesses or deficiencies in the proposal in response to the requirements of the solicitation.
- D. If requested, an explanation of the score received for each evaluation criteria will be provided, including costs, if applicable.
- E. If applicable, a summary of the rationale for award.
- F. Responses to any relevant questions of the Proposer.

Untimely debriefing requests will also be considered.

22. REFERENCE CHECKS

The contact person listed as a reference shall be someone who has personal knowledge of the Proposer's performance during the referenced contract. Contact persons shall have been informed that they are being used as a reference and that the County may be contacting them. More than one person can be listed but all shall have knowledge of the project. DO NOT list principals or officers who will not be able to answer specific questions regarding the project.

Failure of references listed to respond to the County's inquiries may negatively impact the evaluation of the Proposal. The reference shall be the owner or a representative of the owner.

23. **CONFIDENTIAL INFORMATION**

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State or Federal Law, all proposers should be aware that Request for Proposals or Invitation for Bids and the responses thereto are in the public domain. **Proposers must identify specifically** any information contained in their response which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, **citing specifically the applicable exempting law.** If a Proposer fails to cite the applicable exempting law, we will treat the information as public.

24. **PUBLIC RECORDS COMPLIANCE** **(APPLICABLE FOR SERVICE CONTRACTS)**

Orange County is a public agency subject to Chapter 119, Florida Statutes. The Contractor agrees to comply with Florida's Public Records Law. Specifically, the Contractor shall:

1. Keep and maintain public records required by Orange County to perform the service.
2. Upon request from Orange County's custodian of public records, provide Orange County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to Orange County.
4. Upon completion of the contract, Contractor agrees to transfer at no cost to Orange County all public records in possession of the Contractor or keep and maintain public records required by Orange County to perform the service. If the Contractor transfers all public record to Orange County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Orange County, upon request from Orange County's custodian of public records, in a format that is compatible with the information technology systems of Orange County.
5. A Contractor who fails to provide the public records to Orange County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.
6. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT :**

PROCUREMENT PUBLIC RECORDS LIAISON
400 E. SOUTH STREET, 2ND FLOOR, ORLANDO, FL 32801
PROCUREMENTRECORDS@OCFL.NET, 407-836-5897

25. FEDERAL AND STATE TAX

The County is exempt from Federal and State Sales and Use Taxes for tangible personal property (Certificate of Registry for tax transactions under Chapter 32, Internal Revenue Code and Florida Sales/Use Tax Exemption Certificate). The Manager, Procurement Division will sign an exemption certificate submitted by the Contractor.

Contractors doing business with the County shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the County, nor shall any Contractor be authorized to use the County's Tax Exemption Number in securing such materials.

26. PROPRIETARY/RESTRICTIVE SPECIFICATIONS

If a proposer considers the specification contained herein to be proprietary or restrictive in nature, thus potentially resulting in reduced competition, they are urged to contact the Procurement Division prior to bid opening. Specifications which are unrelated to performance will be considered for deletion via addendum to this Request for Proposals.

27. MISTAKES

In the event of extension error(s), the unit prices will prevail and the proposer's total offer will be corrected accordingly. In the event of addition errors, the extended totals will prevail and the Proposer's total will be corrected accordingly. Any discrepancy between words and numbers will be resolved in favor of the written words. Proposers must check their submissions where applicable. Failure to do so will be at the Proposer's risk. Proposals having erasures or corrections must be initialed in ink by the Proposer.

28. CONTRACTUAL AGREEMENT

This solicitation shall be included and incorporated in the final contract or purchase order. The order of contract precedence will be the contract (purchase order), solicitation, and proposal. Any and all legal actions associated with this Request for Proposals and/or the resultant contract (purchase order) shall be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be the Ninth Circuit Court in and for Orange County, Florida.

29. PAYMENT TERMS/DISCOUNTS

The County's payment terms are in accordance with Florida Statute 218, Local Government Prompt Payment Act. Cash discounts for prompt payment will be considered in determining the lowest net cost for fee proposal evaluation purposes. Notwithstanding the above, discount payment terms shall not be less than net 30 calendar days from receipt of correct invoice.

30. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

By submission of this offer, the Proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that in connection with this procurement:

- A. The prices in this offer have been arrived at independently, without consultation, collusion, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor.

- B. Unless otherwise required by law, the prices which have been offered in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly to any other Proposer or to any competitor; and,
- C. No attempt has been made or shall be made by the Proposer to induce any other person or Proposer to submit or not to submit an offer for the purpose of restricting competition.

31. **FEDERAL REQUIREMENTS**

In the event this Contract is paid in whole or in part from any federal government agency or source, the specific terms, regulations and requirements governing the disbursement of these funds shall be specified herein and become a part of this clause.

Equal Employment Opportunity: For any federally assisted construction contract, as defined in 41 CFR 60-1.3, the contractor, subcontractor, subrecipient shall follow all of the requirements of the Equal Opportunity Clause as stated in 41 CFR 60-1.4.

Davis-Bacon Act: For any federally assisted construction contract, in excess of two thousand dollars (\$2,000), the contractor, subcontractor, subrecipient shall comply with all of the requirements of the Davis-Bacon Act (40 U.S.C. 3141 – 3148) as supplemented by Department of Labor Regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and assisted Construction”); and the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). For a definition of “Construction” see 48 CFR 2.101.

Contract Work Hours and Safety Standards Act: For any federally assisted contract, in excess of one hundred thousand dollars (\$100,000), that involves the employment of mechanics or laborers, the contractor, subcontractor, subrecipient shall comply with all of the requirements of the Contract work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704), as supplemented by Department of Labor Regulations (29 CFR Part 5).

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding one hundred thousand dollars (\$100,000) must file the required Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements Appendix A. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Rights to Inventions Made Under a Contract or Agreement: For any federally assisted contract, awarded to a small business firm or nonprofit organization as defined in 37 CFR 401.2 for the performance of experimental, developmental, or research work, the contractor, subcontractor, subrecipient agrees to all of the terms in 37 CFR 401.14(a) and (b) regarding Patent Rights and The Allocation of Principal Rights.

Clean Air Act and the Federal water Pollution Control Act: For any federally assisted contract, or subgrant, in excess of one hundred and fifty thousand dollars (\$150,000), the contractor, subcontractor, subrecipient or subgrant recipient shall comply with all of the requirements of the Clean Air Act (42 U.S.C. 7401 -7671q.) and the Federal water Pollution Control Act as amended (33 U.S.C. 1251 – 1387).

Procurement of Recovered Materials:

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- (2) Information about this requirement, along with a list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Awarded Contractors are required to fully comply with all requirements outlined in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

This contract is subject to change based on guidance from the Federal funding source.

32. SUBCONTRACTING AND REQUIRED OUTREACH TO SMALL AND MINORITY BUSINESS ENTERPRISE (MBE), WOMEN BUSINESS ENTERPRISES (WBE), AND LABOR SURPLUS AREA FIRMS

Proposers subcontracting any portion of the work shall state name and address of subcontractor and the name of the person to be contacted on the attached “*Schedule of Subcontracting and Affidavit of Compliance with 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) Requirements*”.

CAUTION

If subcontracting any portion of the work, a Proposers failure to submit an executed and notarized “Schedule of Subcontracting and Affidavit of Compliance with 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) Requirements” may result in the proposal being rejected as nonresponsive.

Proposers who are small and minority-owned, women-owned business enterprises, and labor surplus area firms shall not be exempt from complying with the affirmative steps outlined in 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) when subcontracting.

- A. Orange County may be receiving federal funding through Department of Homeland Security for the services solicited in the Request for Proposals (RFP). Accordingly, Orange County's M/WBE ordinance and program do not apply to this solicitation.
- B. Among the many federal funding requirements, 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) mandates that the Prime Contractor/Sub-recipient partakes in five "affirmative steps" designed to ensure that small and minority-owned, women-owned business enterprises, and labor surplus area firms have been, and for the duration of the project continue to be, afforded subcontracting opportunities. These affirmative steps are:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
 - 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- C. In order to adequately document that the proposer has fulfilled this requirement, if Sub-contracting, the proposer shall complete the provided "Schedule of Subcontracting and Affidavit of Compliance with 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) Requirements". The affidavit shall be notarized for this proposal to be responsive.
- D. The County reserves the right to request the following validation documentation throughout the performance period of the contract:
 - 1. Copies of announcements/postings in newspapers, emails, web-postings, or other media for specific contracting/subcontracting opportunities that target small and minority businesses and women's business enterprises;
 - 2. Copies of announcements/postings of contracting/subcontracting opportunities in trade publications, minority, or women's media that target small and minority businesses and women's business enterprises.
 - 3. Documentation of sources used to identify potential small and minority businesses and women's business enterprises. A suggestion would be searching through the SBA's Dynamic Small Business directory at the following internet address: <http://dsbs.sba.gov> to search for registered minority and small businesses.

E. The County reserves the right to monitor the contractor/sub-recipient for continued compliance with 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds). The ability for that awarded contractor/sub-recipient to be awarded federally funded contracts in the future may be jeopardized should that awarded contractor/sub-recipient fail to comply with the intent and spirit of 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds).

F. **Contact Business Development Division at (407) 836-7317, if you additional questions pertaining to this requirement.**

33. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

By submission of a proposal, Respondent affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Respondent shall submit the Federal Debarment Certification Form demonstrating compliance.

34. FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS

By submission of a proposal, Respondent affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

SECTION 2
SCOPE OF SERVICES

SCOPE OF SERVICES

1. BACKGROUND

- A. The Orange County Convention Center (OCCC) is a high profile Convention Center which encompasses approximately 94 acres of exterior landscape areas requiring Four Diamond exterior landscape management services. Four Diamond facilities as defined by AAA are establishments that are upscale in all areas. Accommodations are progressively more refined and stylish. The physical attributes reflect an obvious enhanced level of quality throughout. The fundamental hallmarks at this level include an extensive array of amenities combined with a high degree of hospitality, service and attention to detail. As it pertains to Exterior Landscaping, this requires an excellent variety of mature plants in vast quantities throughout the site which are obviously professionally planned, manicured and maintained.
- B. The Contractor shall accept the exterior landscaping, including turf, planting beds, shrubs, and trees in an “as is condition”. NOTE: The OCCC reserves the right to select which area(s) are to be serviced as listed in the Scope of Services by providing a minimum of a seven (7) calendar days prior written notice before exterior landscape services are performed excluding irrigation.
- C. Due to the nature of the OCCC business, it is essential that all exterior landscape management services be performed so as to not interfere with any OCCC event. Exterior landscape management services shall not conflict with event activity in the OCCC. The Contractor shall be responsible for all expenses incurred by the OCCC if exterior landscape maintenance interferes with any of the OCCC’s events.
- D. Contractor shall work with the OCCC with regard to LEED EB+OM Certification requirements and Exterior Landscape best practices for the OCCC. The exterior landscape best practices are contained in Sections 8 and 10 of Attachment #1 of this Scope of Services.

2. LOCATIONS

- A. The Contractor shall provide comprehensive exterior landscape services for the entire OCCC campus, which includes the following areas listed below. The Contractor shall be responsible for the mowing, trimming and care of all turf areas contained within the OCCC campus. In addition to the turf areas, the Contractor shall perform the following additional services at these designated locations:

- 1. **OCCC West Building (approximately 25 acres of landscape area)** shall include but not limited to trimming of all vegetation along the I-4 and 528 fence lines and adjacent to the Rosen Plaza Hotel hedge line.

OCCC North/South Building (approximately 25 acres of landscape area) shall include all areas beginning at the Convention Way fence line and extending to the end of the paved parking area per attached North/South property layout in Attachment 3.

- 3. **Remote Area (approximately 30 acres of landscape area)** shall include turf adjacent to the North Concourse, Universal Blvd. and the North/South parking lots. All vegetation shall be trimmed along fence line, ditches, culverts, guard rails or other obstructions during each mowing cycle.

4. **Orangewood Lot (approximately 1/2 acre of landscape area)** shall include the turf area from the fence line to International Drive. Maintenance shall include trimming at the appropriate time of year of all the wax myrtles that protrude through the fence and the oleanders that are located outside the fence.
5. **Freightway Boulevard (approximately 3/4 acre of landscape area)** - all vegetation shall be trimmed along fence line, culverts, ditches, guard rails or other obstructions during each mowing cycle.
6. **Tradeshow Boulevard (approximately 2-1/2 acres of landscape area).** Turf shall be mowed to the fence line where applicable or no less than fifteen (15) feet on either side of roadway. Turf shall be mowed to edge of pond and property line curb at the South Parking Entrance Road. All vegetation shall be trimmed along fence line, culverts, ditches, guard rails or other obstructions during each mowing cycle.
7. **Convention Way** shall be mowed up to the chain link fence from Universal Blvd. to International Drive to include the area under the oversight bridge. All vegetation shall be trimmed along fence line, culverts, ditches, guard rails or other obstructions during each mowing cycle.
8. **Westwood Connector (approximately 2500 square feet)** bridge shall be cleared of overgrowth utilizing a Bush-hog or similar equipment. Area to be cleared shall extend ten (10) feet north of the bridge and begin at Westwood Blvd. continuing east approximately two hundred-forty (240) feet to the fence line. The vehicle and pedestrian walkway on the bridge shall remain free of all weeds and other debris.
9. **Remote Area (Taxi Cab Staging Area) Fence Line (approximately 1/2 acres of landscape area)** Off Universal Boulevard from Tradeshow Boulevard. to the first OCCC entrance, shall be cleared of weeds and other debris. Mow the exterior from the fence line to the sidewalk. The fence line itself shall remain free of weeds.
10. **Power Line (approximately 8 acres of landscape area)** right of way adjacent to the Remote Area (Taxi Cab Staging Area) shall be cleared utilizing a Bush-hog or similar equipment. The area begins at the Universal Blvd. fence line and continues to the Remote building entrance.
11. **Convention Center District Offices/Destination Parkway Parking area (approximately 1.5 acres of landscape area)** shall include but not be limited to trimming of all vegetation along the 528 fence line.
12. The South and West wall and fence line adjacent to the retention pond across from the Hall A Parking Garage-West Building shall be trimmed of weeds and other undesirable growth.
13. The rolling gate located at the North Perimeter Road at the West Building shall remain free of weeds, vines and other undesirable growth.
14. The Westwood Connector Bridge and Pedestrian Walkway shall remain free of weeds and debris.

3. TURF AREAS

Mowing height for St. Augustine or Bahia turf shall be a minimum of three (3) inches at the **North/South Building, West Building and Convention Center District Office/Destination Parkway Parking Area**. Mower blades shall be mulching style blades, and sharpened as needed to provide a quality cut. Mowers shall be disinfected/sanitized prior to each use at the OCCC to ensure diseases/fungi are not transferred to OCCC areas. The Contractor shall leave clippings on the lawn as long as no readily visible clumps remain on the grass surface. Otherwise, the Contractor shall distribute large clumps of clippings by mechanical blowing or by collecting and removing them. The Contractor shall not blow clippings into parking lots or other built up areas. In the case of fungal disease outbreaks, the Contractor shall collect clippings until the disease is undetectable.

4. SHRUBS AND GROUND COVER (TO INCLUDE, BUT NOT LIMITED TO TREES, PLANT BEDS AND SHRUBS)

- A. All plants on the OCCC campus/property shall be maintained to a well-shaped appearance, according to each species' natural growth habit (including palms). Flowering shrubs shall be pruned in season, to allow full flowering potential for the season. Grouped plantings shall be allowed to form masses appropriate to the species.
- B. All plant beds shall be rounded and beveled so that irrigation pop ups and risers can distribute water over the entire bed.
- C. Weeding of shrubs, ground cover and all fence lines encompasses the removal of all weeds and growth by the Contractor. Weeding may be accomplished using pre-emergent herbicide, Roundup or equivalent and/or mechanical methods.
- D. The Contractor shall present pictures/drawings showing how it proposes to trim the various plants for OCCC approval. The OCCC reserves the right to change the shapes of any plants up to two times per contract year after initial approval at no additional cost.
- E. Edging shall be accomplished along with scheduled mowing to maintain clean edges around plant, beds, curbs, sidewalks, streets, trees, irrigation boxes, plants and buildings.
- F. The Contractor shall replace, at their expense, any plant or lawn area that dies or becomes weak/unsightly due to improper maintenance as determined by the OCCC Representative.
- G. String trimmers (weed eaters) shall not be used to trim around trees or plants.
- H. The Contractor shall maintain the canopy of all plant, shrub, and tree material to a minimum of eight (8') feet over turf and sidewalk areas and a minimum of twelve (12') feet over roadways or driveways.

5. ANNUAL TRIMMING AND PRUNING OF CREPE MYRTLE TREES

- A. The Contractor shall trim and prun all crepe myrtle trees annually by using proper horticulture practices such as tipping and pollarding.
- B. Tipping are cuts that are made through smaller-diameter branches on the outer edge of the plant canopy and is sometimes called rounding over or pencil pruning because cuts are made through stems about the diameter of a pencil.

- C. Pollarding involves making cuts through branches up to about three years old, and then annually removing all or most sprouts back to the original cut. The Contractor shall cut back pollard trees to exactly the same size year to year to ensure cuts are made back to the pollard heads. The pollard head contains abundant stored energy with little decay and should be removed. Clean-up and disposal of the clipping are to be removed.

6. MULCH

- A. Mulch shall be maintained to a depth of three (3) inch thickness.
- B. Mulch may be blown in as approved by the OCCC Representative. The Contractor shall be responsible for any damage caused by equipment or personnel during installation.
- C. The Contractor shall purchase mini-pine bark mulch, or approved alternative, as determined by the OCCC Representative.
- D. Mulch shall not be applied within two (2) inches of plants, trunks or stems, nor shall mulch be placed on top of any part of any plant.
- E. All trees planted in a turf area shall have mulch applied at a minimum radius of twelve (12) inches surrounding the base of the tree.

7. MAINTENANCE OF PLANTING BEDS

- A. Maintenance of planting beds encompasses maintaining newly planted landscape planting beds as well as established older planting beds. Additionally, it incorporates planting, care and maintenance of plant material in urns located at the OCCC. It includes removal of litter, tilling of soil, soil drench, topping, trimming and weeding.
- B. Weeding of plant beds and urns encompasses the removal of all weeds and growth by the Contractor. Weeding shall be accomplished utilizing hand methods, mechanical methods, pre-emergent herbicide, Roundup or equivalent.
- C. The Contractor shall adhere to the fee schedule for the provision, installation and maintenance of annual flowers in planting beds and urns. Products shall be commonly used flowering annual plants in full 4" (four inch) pots.
- D. The Contractor shall perform each replacement within a period of four (4) days. The Contractor shall submit a calendar quarterly planting schedule for approval by the OCCC Representative.
- E. Annual plant beds and urns shall be planted with a species appropriate to the season and location based on plant menu with the approval of the OCCC's Representative. Plants shall be changed out no fewer than four (4) times each year based on the following schedule: March, June, September, and December.
- F. Planting beds and urns shall be maintained to provide a neatly groomed and healthy appearance at all times. If at any time, the Contractor's work is deemed unsatisfactory or plants are not considered healthy by the OCCC Representative, the service shall be performed again at no additional cost to the OCCC.
- G. Urn plantings shall be in a circular configuration with twenty (20) plants per urn. Prior to each planting cycle, urns shall have the soil mix aerated by hand mixing and an application of fungicide (Subdue or equal) applied. Soil material shall be replaced by the contractor as necessary to keep soil level in each urn at 2" below rim height. Urns shall be watered three (3) times weekly, by spray.

H. PLANTING SELECTION SCHEDULE FOR ANNUALS:

All annual plant beds and urns shall be planted with a species appropriate to the season and location (sun or shaded areas), contingent upon approval by the OCCC Representative.

I. QUARTERLY REPLACEMENT OF ANNUALS:

1. The OCCC Representative shall request from the Contractor a quotation which shall include a detailed scope of work and a fixed price which shall be in accordance with the rates provided on the fee schedule for the quarterly replacement of annual plant beds and urns. Upon receipt of a separate Delivery Order, the Contractor shall promptly proceed with the replacement of plants.
2. The Contractor shall attach to the invoice a copy of the Contractor's supplies receipt for the plants used for the replacement.

8. IRRIGATION

A. The Contractor shall provide all labor, materials, equipment and permits necessary for the monthly inspections, repair, renovation or replacement of irrigation systems to include but not limited to rotors, sprays, control wiring, piping and valves on the premises of the OCCC. The Contractor shall accept the irrigation systems on an "as is basis". The Contractor shall have a qualified, licensed irrigation technician capable of adjusting the timers, manually running the system and performing all necessary repairs or upgrades.

1. Emergency call-in: Service Technicians telephone response time shall be within sixty (60) minutes of notification. On site response time shall be within two (2) hours of notification for emergency repairs.
2. Technical Irrigation Specifications: The following represents the minimum standards to which the Contractor shall perform the work included in this contract. The Contractor shall provide all traffic control signage, flashing lights, string and ribbon barricades, or other barricades as required for the designated work areas, per DOT or Orange County requirements.
3. Irrigation system inspection: The Contractor shall perform inspections of irrigation systems weekly. The Contractor shall submit inspection schedule on the prior month for next month's service for approval by the OCCC Representative. Required adjustments and/or replacements discovered during weekly inspections shall be promptly accomplished. Inspections include the following:
 - a. Inspect each zone for proper operation of automatic control valves, coverage, and head performance. Ensure that spray nozzles are unclogged, gear driven or impact rotors rotate as designed, and all pop-ups function properly at full extension and completely retract when turned off.
 - b. Examine manual valve boxes for leaks and proper orientation; adjust, repair, or replace as needed.
 - c. Inspect valve boxes of automatic valves, gate valves, and wire splices to insure that contents are fully enclosed, protected, and free of mud slurry, litter, and that lids are secure.

- d. The Contractor shall also ensure the control clocks are programmed with the correct program days, station start times and run times. All clock settings shall be approved by the OCCC Representative.
- e. Irrigation application shall be accomplished so that plants are watered adequately. The Contractor shall assure proper irrigation coverage and proper water relationships during inspections to avoid prolonged dry/wet conditions.
- f. The Contractor shall submit a proposed inspection worksheet for the OCCC approval within seven (7) calendar days after contract award. The Contractor shall provide to the OCCC a comprehensive weekly inspection worksheet within two (2) calendar days after the inspection was scheduled to be accomplished, by either electronic or hard copy, detailing the problems and recommended actions identified by zone number and location. The report shall also include a not-to-exceed cost estimate for any recommended repairs or replacements.
- g. Upon review of the inspection report, the OCCC Representative shall approve or disapprove the recommended repairs. This corrective action shall be completed by the Contractor within two (2) calendar days after approval is granted by the OCCC Representative

4. Irrigation Head Replacement

- a. Defective/broken irrigation heads shall be removed and disposed of by industry approved methods.
- b. Replacement irrigation heads shall be of the same quality, type, nozzle size as existing, unless otherwise directed by the OCCC Representative.
- c. All replacement irrigation heads shall be properly adjusted and oriented for appropriate operation.

5. Irrigation Valve Replacement

- a. Defective irrigation valves shall be removed and disposed of by industry approved methods.
- b. Replacement irrigation valves shall be of the same quality, type, size as existing, unless otherwise directed by the OCCC Representative.
- c. Upon installation of a replacement irrigation valve or valve box, the box shall be filled to a point of $\frac{1}{2}$ the depth of the valve body with #89 stone. (This is to provide for a clean area within the valve box for maintenance or repair of the irrigation valve).

6. Main/Lateral Line Replacement/Repair

In the event that an irrigation lateral line is deemed “damaged beyond repair”, it shall be brought to the immediate attention of the OCCC Representative for direction. Upon approval for repair, the defective section of lateral line shall be

removed/replaced with piping/conduit of the same size, material, quality unless otherwise directed by the OCCC Representative. All removed materials shall be disposed of by industry approved methods.

7. Irrigation Control Wiring

Defective irrigation control wiring shall be replaced or repaired. Replacement irrigation control wiring shall be of the same gauge, insulation and color as original. Repairs/splices to the irrigation control wiring shall be accomplished with fittings approved for the purpose and location.

8. Irrigation Systems Operation

It shall be the Contractor's responsibility to ensure all zones provide proper irrigation coverage for their respective landscape area. The Contractor shall be responsible for the scheduling of the irrigation system zones operating time. The system operating time shall be coordinated with the OCCC Representative for computer controlled systems. Settings shall observe all water restrictions invoked by any government agency. The Contractor shall notify the OCCC Representative via phone or E-mail of impending problems as they occur in the field.

9. Repairs

- a. The Contractor shall be responsible for the repair to or replacement required of all broken, damaged, or missing sprinkler heads, irrigation lines, timers, valves and controllers.
- b. The Contractor shall notify the OCCC Representative of any irrigation repairs that become necessary. The OCCC Representative shall request from the Contractor a quotation which shall include a detailed scope of work and a fixed price which shall be in accordance with the hourly rates provided on the fee schedule. Upon receipt of a separate Delivery Order, the Contractor shall promptly make any necessary repairs.
- c. Irrigation system repairs shall be made within twenty-four (24) hours upon receipt of Delivery Order.
- d. The Contractor shall attached to the invoice for said repairs, a copy of the Contractor's actual paid invoice for the purchase of parts, supplies and materials installed.

10. Sprinkler Head and Pop-Up Repairs Beyond the Flexible Supply Hose Connection

- a. The Contractor may bill OCCC for all repairs or replacement required of all broken, damaged, or missing sprinkler heads and pop-ups beyond the flexible supply hose connection to a maximum of \$5,000 per year regardless of who caused the damage
- b. Any such repairs or replacements required over and above the \$5,000 limit shall be the Contractor's responsibility. All repairs shall be completed within twenty-four (24) hours of discovery.

- c. Beginning at the contract start date, the Contractor shall submit a monthly financial report showing the amount spent for repairs beyond the flexible supply hose connections. The calculation shall include the total of materials expended plus mark up in accordance with the fee schedule.

11. Invoicing

- a. The Contractor shall submit, attached to the inspection invoice, a copy of the inspection report for site included on the invoice.
- b. The Contractor shall submit, attached to the repair or replacement invoice, a copy of the Contractor's actual paid invoice for the purchase of parts and materials installed.

12. Location of Irrigation Systems

- a. OCCC West Building
- b. OCCC North/South Building.
- c. Convention Center District Offices/Destination Parkway Parking Area.

9. GENERAL CHEMICAL APPLICATION

The Exterior Landscape-Irrigation Contractor shall coordinate with the Chemical Applicator Contractor and adjust the clocks per the Chemical Applicator's recommendation when chemicals are to be applied to the landscaped areas.

10. DESIGNATED REPRESENTATIVE

The OCCC Representative will be the Facilities Operations Manager or designee. Contract related questions shall be referred to the Administrative Supervisor or the Contract Management Administrator or designee.

The lack of inspections by the OCCC or any error or omission in these scope of services shall not relieve the Contractor of its obligation to perform exterior landscape management services in accordance with generally accepted industry standards.

11. GENERAL CONDITIONS

A. Hours of Performance

- 1. Standard Hours: Standard working hours are Monday through Friday, 7:00 AM to 5:00 PM.
- 2. Non-Standard Hours: Non-Standard working hours are 7:00 AM to 5:00 PM, Saturday and Sunday, after 5:00 PM Monday through Friday.

- B. The Contractor shall maintain sole responsibility for the actions of its employees and subcontractors. The OCCC Representative shall, in no instance, have the authority to act as foreman or supervisor for the Contractor and shall not interfere with the Contractor in the supervision or direction of their employees. Any advice provided to the Contractor by the OCCC Representative shall in no way be construed as binding upon the Contractor or release the Contractor from fulfilling the provisions of the contract.

- C. All personnel provided by the Contractor, whether employees of the Contractor or Sub-contractors, shall be competent, neat, experienced, courteous, well groomed and properly dressed with shirt displaying the company name/logo, photo ID badge and skilled in lawn, plant and grounds maintenance.
- D. The Contractor shall provide a full time Operations Manager and on-site Operations Supervisor for this contract. The Operations Manager assigned to the OCCC shall have a minimum of ten (10) years verifiable exterior landscape management experience. The on-site Operations Supervisor assigned to the OCCC shall have a minimum of eight (8) years verifiable exterior landscape experience. Both the Operations Manager and Operations Supervisor's minimum required experience shall include working on Four Diamond properties such as Convention Centers, Airports, Convention Hotels, Golf Courses and Upscale Developments. Both the Operations Manager and Operations Supervisor shall be capable of verbal and written communication in the English language to the satisfaction of the OCCC Representative. The OCCC will retain the right to approve/disapprove of any individual submitted by the Contractor for either the Operations Manager or Operations Supervisor position.
- E. The OCCC Representative may request the Contractor remove any Operations Manager or Operations Supervisor if it is determined that services are not being performed in accordance with the terms and conditions of this contract. Should an Operations Manager or Supervisor be assigned to another contract, terminated, or resign, the Contractor shall have seven (7) calendar days to replace the supervisor.

NOTE: OCCC Representative's request to remove any employee from this contract will, in no instance, be considered a request to terminate the affected individual. The sole intent is removal of said individual from this contract.

- F. Contractor shall schedule and have staff on OCCC Property five (5) days per week, (Monday-Friday) during standard hours of operation, per the Operational Plan submitted with the Contractor's RFP Document. The Operational Plan does not preclude or limit the Contractor's ability to have more employees on site, as determined by the work to be performed at any given time.

Minimum Requirement as follows:

- One (1) On-site Supervisor (Minimum Required)
 - Four (4) Dedicated Detail staff
 - Six (6) Dedicated mowing staff members
 - Two (2) Irrigation Technicians (Minimum Required). The Technicians shall be Florida Certified, and capable of adjusting the timers, manually running the system and performing all necessary repairs or upgrades.
 - The Contractor shall have at least two (2) detail and two (2) certified irrigation technicians available for on call emergencies and weekends.
- G. Contractor shall have equipment on OCCC Property five (5) days per week, (Monday-Friday) during standard hours of operation, per the Operational Plan submitted with the Contractor's RFP Document. The Operational Plan does not preclude or limit the Contractor's ability to have more equipment on site, as determined by the work to be performed at any given time.

Minimum Requirement as follows:

- Four (4) zero turn rotary mowers
- Two (2) walk behind or stand on mower
- Four (4) each of: string trimmers and backpack blowers
- Four (4) each of: long hedge shears and stick edgers
- Four (4) trailers for transporting equipment
- Three (3) pickup truck
- One (1) dump type truck
- Four (4) Utility Vehicles (ie, Kawasaki Mule, John Deere Gator)

- H. The Contractor shall make available a 24 hour / 7 day contact person for additional services, including repairs to the exterior landscape or irrigation system. Contractor shall provide to the OCCC's Representative either a phone number, cell phone number, and/or email address. The Contractor's response time shall be within two (2) hours.
- I. Any subcontracting shall be at the approval of the OCCC Representative.
- J. The OCCC will provide a staging area for the Contractor's use during the normal performance of their duties. This staging area will be located at the Destination Parkway flat lot. OCCC reserves the right to move said staging area as needed to meet operational requirements of the OCCC.
- K. The services described herein shall be performed by the Contractor on a regularly scheduled basis as outlined. There shall be no deviation from the scope of services without prior approval from the OCCC's Representative.

12. STATE DECLARED EMERGENCY ITEMS

The following line items will only be used in the event the County requests FEMA (Federal Emergency Management Administration) reimbursement for declared emergencies. Other line items cannot be combined with the following:

- A. Emergency Standard Hours- Labor hours for work during standard working hours Monday through Friday, 7:00 AM to 5:00 PM. Time sheets are required in addition to the federal required documents that the County representative requests.
- B. Emergency Non Standard Hours- Labor hours for work during non-standard working hours 7:00 AM to 5:00 PM, Saturday and Sunday, after 5:00 PM until 6:59 AM Monday through Friday. Time sheets are required in addition to the federal required documents that the County representative requests.
- C. Emergency- debris disposal with legible dump tickets related to the declared emergency, at cost.
- D. Emergency parts, equipment rental, and supplies related to the declared emergency at cost with third party invoice.

13. SAFETY AND PROTECTION

- A. The Contractor shall provide and ensure the wearing of necessary protective clothing, masks, eye protection, hearing protection, etc. as required by any applicable laws, regulations, ordinances, and/or manufacturer's instruction.
- B. All equipment used in the performance of these services shall be properly maintained and shall be subject to inspection by the OCCC's Representative upon demand. Any equipment deemed faulty, inoperable, unsafe or improper for its intended purpose shall be removed from the OCCC's premises. Safety features of equipment (shields, kill switches, etc.) shall be used at all times.
- C. Maintenance work shall be scheduled to provide the least inconvenience to building occupants and passers-by. The Contractor shall provide traffic control signage, flashing lights, string and ribbon barricades, cones, or other barricades to protect staff, pedestrians and vehicular traffic, as needed.
- D. Any damage to the OCCC facilities or property due to the services performed by the Contractor shall be the responsibility of the Contractor.
- E. The Contractor shall provide and maintain a chemical inventory list, as well as the applicable Safety Data Sheets (SDS).

14. SECURITY AND IDENTIFICATION

- A. Background Checks for the Contractor's staff shall be approved by the OCCC Security team prior to working in or around any OCCC facility. The Contractor shall obtain the necessary forms for background checks as follows. The OCCC reserves the right to conduct its own investigation of any employee of the Contractor.
 - 1. For all Contractor's staff and/or employees that will be working at any part of the OCCC and related facilities, including the Destination Parkway Parking Structure, the Contractor shall perform background checks at its expense and submit them to OCCC Security for determining whether the employee is acceptable to be allowed to work for OCCC. The background checks must be submitted each year the contract is valid.
 - 2. The Contractor shall provide a level 1 (5 years) background check, dated ninety (90) days prior to contract effective date, for any employees before starting work to include:
 - a. Identification Verification
 - b. Selective Service Status (registered/unregistered).
 - c. FDLE Automated Criminal Record
 - d. Clerk of Courts by County of Residence
 - e. Employment Verification
 - f. DMB by State Residence
 - g. Military Verification
 - h. Professional License and Certification Check

- B. In addition, a Drug Screen – Five Panel test, including at least the following, shall be performed for each employee:
- Amphetamines
 - Cocaine Metabolites
 - Marijuana Metabolites
 - Opiate Metabolites
 - Phencyclidine
- C. The Contractor's employees shall not be allowed on the OCCC property without completed and approved background investigations.
- D. Upon termination or transfer of any employee of the Contractor working under this contract, the Contractor shall immediately notify the OCCC Representative, in writing, of such termination or transfer, and surrender the OCCC issued identification badge.
- E. The Contractor shall report the arrest of any employee working under the terms of this contract to the OCCC Representative within twenty four (24) hours of the arrest or knowledge of the arrest. It shall be subject to the approval of the OCCC Representative whether the employee shall continue to work at the OCCC locations within this contract.
- F. The Contractor shall ensure that all vehicles used by their staff are properly identified with the company's name and logo.
- G. The Contractor shall remove from the OCCC premises any employee, who in the opinion of the OCCC's Representative or designee, is not performing the services in a proper manner, or who is incompetent, disorderly, abusive, dangerous, disruptive, or does not comply with the rules and regulations of the OCCC or Orange County. The Contractor shall in no way, interpret such removal to require dismissal or other disciplinary action of the employee. Employees shall not use controlled substances, unless prescribed, nor illegal substances, and shall not use alcohol on the Center premises. The OCCC Representative will request that anyone suspected of working under the influence of alcohol or controlled substances be removed from the workplace. It will be at the OCCC's Representative's discretion as to whether said employee will be permitted to return to the OCCC.

15. QUALITY CONTROL AND WORKMANSHIP

All work shall be quality work performed according to the standards herein at a minimum, and to the complete satisfaction of the OCCC. All work shall be the level of quality typical in a Four Diamond Hotel. The Contractor shall provide, at a minimum, the staffing as designated above for the satisfactory performance of this work at the frequencies and within the time frames specified. These staffing requirements do not preclude or limit the Contractor's ability to have more employees on site, as determined by the work to be performed at any given time. The Contractor shall establish and follow a quality control program for the purpose of identifying and correcting deficiencies in the quality of services performed before the level of service becomes unacceptable to the OCCC. All documentation used for the quality control program shall be made available for review by the OCCC upon request.

A. MINIMUM QUALITY CONTROL INSPECTIONS

The Contractor shall provide a quality control inspection worksheet, in an approved OCCC approved format, depicting the inspected areas of the exterior landscaping after work is completed. The worksheet shall list areas such as plant beds, shrubs, turf, urns, ground cover, other vegetation, and all other aspects of landscape services.

The inspection worksheet shall be completed on a weekly basis. The OCCC reserves the right to increase the frequency of the inspections based on Contractor performance and or building activity.

The worksheet shall have all specific tasks listed in the scope of services by specific areas. The Contractor's inspector shall be a person that does not perform the daily services. The worksheet shall include signature signoff by the Inspector and Contractor Operations Manager. The worksheet format shall be submitted to the OCCC Representative for approval within seven (7) calendar days after contract award. The Contractor shall submit, either by hard copy or electronic copy, the completed worksheet with inspection results and problems encountered with proposed corrective action to be taken by the Contractor within two (2) calendar days after the inspection was scheduled to be accomplished.

B. TRASH REMOVAL

When services are provided, the Contractor shall inspect all OCCC landscaped areas and parking lots and remove all trash (to include but not limited to paper, plastic, metal, garbage, etc.), fallen limbs and dead vegetation.

C. WEEDS

When services are provided, the Contractor shall inspect all OCCC planting beds, shrubs and ground cover (excluding turf) and remove all weeds.

**16. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)
LANDSCAPE REQUIREMENTS**

The Contractor shall be responsible for performing services as required in order to assist the OCCC in maintaining LEED certification for the OCCC. These requirements include, but are not limited to, the following:

A. All non-infested landscape waste shall be diverted from the landfill. The Contractor shall be responsible for the proper sorting and delivery to mulching or compost facility. Grass clippings, small leaves, and light pruning debris shall be returned into lawn areas on site. Large Tree debris or diseased plant material shall be collected and hauled offsite for proper disposal or mulching. The Contractor shall track quantities of landscape waste diverted by weight and by building location (North/South or West Building).

1. The Contractor shall utilize Florida friendly plant species that are well-suited for the local climate and require minimal irrigation, fertilization, and maintenance.

2. The Contractor shall report the amount (in pounds) of landscape waste diverted from the landfill by building location (North/South or West) on a quarterly basis to the OCCC Representative.
3. The Contractor shall utilize manual weeding and pruning when possible prior to mowing and during ornamental plant maintenance.
4. To reduce the potential for on-site fuel spills, The Contractor shall ensure that at least 80% of their fuel mixing and equipment refueling occurs off-site. (See Attachment A for detail information regarding LEED regulations.)

17. DEFICIENCIES

- A. During the periods of work, the Contractor shall consult with the OCCC Representative for inspection and approval of work quality being accomplished. In the event of unsatisfactory work, the Contractor shall repeat the work without additional compensation, within two (2) calendar days. The Contractor shall correct all deficiencies before final acceptance and payment is made. If a second re-inspection is required, the OCCC will assess a \$200.00 fee to the Contractor. The \$200.00 fee will be assessed for every re-inspection after the first re-inspection. The fee is assessed to offset the additional OCCC labor costs to include Horticulture Consultant fees and vehicle usage required for unnecessary inspections and the fee will be deducted from the invoice for the period in question for that delivery order.
- B. All work shall be performed professionally in accordance with generally accepted horticultural principals. All work shall be performed under the direction of the OCCC Representative.
- C. The OCCC will perform periodic inspections to verify compliance with the scope of services. All inspections will be scheduled at the discretion of the OCCC Representative.

SECTION 3
PROPOSAL SUBMISSION REQUIREMENTS AND DOCUMENTATION

STATEMENT OF NO-PROPOSAL

The Procurement Division is committed to continuously improve its processes and our goal is to receive maximum participation from the vendor community. If your firm chooses not to participate in responding to this solicitation please email Ana.Villalona@ocfl.net, referencing the RFP number, and briefly explain why the decision was made to not participate.

SEALED RESPONSE SUBMITTAL LABEL:

All submittals, should use the hard-copy label below and place on front of their outermost sealed envelope/package.

**DO NOT OPEN - SEALED RESPONSES - DO NOT OPEN
RESERVED FOR PUBLIC BID OPENING**

Company : _____

Contact Name: _____

Contact Phone/ Email: _____

Address: _____

CONTACT: **Ana Villalona**
RFP NUMBER: **Y19-1131-AV**
TITLE: **LANDSCAPE MANAGEMENT AND IRRIGATION
AT THE ORANGE COUNTY CONVENTION CENTER**

PROPOSAL DUE DATE: _____

DELIVER TO:

ORANGE COUNTY PROCUREMENT DIVISION
INTERNAL OPERATIONS CENTRE II
400 E. SOUTH STREET, 2ND FLOOR
ORLANDO, FL 32801.

PRE-REQUISITE REQUIREMENTS

NON-MANDATORY PRE-PROPOSAL CONFERENCE

A **Non-Mandatory Pre-proposal Conference** will be held on **Tuesday, August 20, 2019, 2:30PM**, located at **Orange County Convention Center, 9899 International Drive, Orlando, Florida 32819, South Building, Meeting Room # S230H**. Interested proposers are required to attend. A map and parking pass is included as Attachment 4. Attendance is not mandatory but is encouraged.

At that time, the County's representative will be available to answer questions relative to this Request for Proposals. Any suggested modifications may be presented in writing to, or discussed with, the County's representative(s) at this meeting and may be considered by said representative(s) as possible amendments to the Request for Proposals.

PROPOSAL FORMAT

The County reserves the right to award a contract pursuant to this RFP without further discussion with proposers. Therefore, it is important that each proposal is complete, adheres to the format and instructions contained herein, and is submitted in the most favorable manner possible.

Proposers must respond in the format delineated below:

- Submit one (1) original, eight (8) copies and one (1) electronic copy on USB drive. Electronic copy shall be in Microsoft Word or Adobe – the most recent software version.
- All responses and copies are to be submitted on 8 ½ x 11 inch paper, bound individually and tabbed as applicable.
- If your response contains any information deemed confidential, in accordance with Chapter 119 of the Florida Statutes, provide an additional USB drive with a redacted version of your response labeled REDACTED. Electronic copy shall be in Microsoft Word or Adobe – the most recent software version.

SUBMITTAL REQUIREMENTS

The following information shall be submitted with your proposal. Failure to submit this information in its entirety will negatively impact the evaluation of your proposal.

The Orange County Convention Center (OCCC) is a high profile Convention Center encompassing approximately 94 acres of landscape area requiring Four Diamond exterior landscape management services.

Four Diamond as defined by AAA - are establishments that are upscale in all areas. Accommodations are progressively more refined and stylish. The physical attributes reflect an obvious enhanced level of quality throughout. The fundamental hallmarks at this level include an extensive array of amenities combined with a high degree of hospitality, service and attention to detail. As it pertains to exterior landscaping, this includes an excellent, comprehensive variety of mature plants which are obviously professionally planned, manicured and maintained.

Orange County requires that each firm responding to this proposal identify its qualifications as they relate to this project and service. The information provided shall specifically include the following:

TAB 1. QUALIFICATIONS OF STAFF

- A. Provide an organization chart that lists all staff to be assigned to provide the required services and comprehensive resumes for each describing experience, training and education in the required services.
 1. Provide documentation demonstrating at least two full-time Florida Irrigation Certified Technicians capable of performing all aspects of a large scale irrigation system, including, at a minimum, adjusting the timers, manually running the system and performing all necessary repairs or upgrades.
- B. Provide a statement of qualifications that includes the Operations Manager and On-Site Supervisor credentials and experience, including at least the following:
 1. A list which includes resumes (indicating years of relevant experience) of the Operations Manager and on-site Operations Supervisor that will oversee the services as related to the contract as well as the qualifications of any

proposed sub-contractors. The Operations Manager assigned to the OCCC shall have a minimum of ten (10) years verifiable exterior landscape experience, and the on-site Operations Supervisor assigned to the OCCC shall have a minimum of eight (8) years verifiable exterior landscape experience.

Both the Operations Manager and Operations Supervisor's minimum required experience shall include working on Four Diamond properties such as Convention Centers, Airports, Convention Hotels, Golf Courses and Upscale Developments. Both the Operations Manager and Operations Supervisor shall be capable of verbal and written communications in the English language.

TAB 2. QUALIFICATIONS OF FIRM

- A. Provide a statement of qualifications that include the Proposer's credentials and experience, including at least the following:
 1. Provide a comprehensive listing of the Proposer's contracted exterior landscaping activity over the last ten (10) years during which services similar to those required by this solicitation were provided. This activity listing shall be broken down by services provided, to include at the minimum, turf care, edging, trimming, tree care and trimming, replacement of annual/perennial plants, installation of landscape enhancements, and sidewalk/parking area cleaning.
 - a. The listing shall include site location, client name, address, telephone number, e-mail address, dates of service provided and total gross revenues/charges. Examples of Exterior Landscape Management services references shall include large Four Diamond high profile buildings/complexes such as Convention Centers, Airports, Convention Hotels, Golf Courses and Upscale Developments, Resorts, Hotels, Theme Parks, and other upscale hospitality properties.
 2. List at least five (5) references, for which the Proposer has performed work similar in scope and magnitude including the contact name, address, email address, telephone number and date of the contract. Include a brief description detailing location, size of facility (in landscaped acreages) dates of contract, names, addresses and telephone number and email address of owner. These contracts shall include Four Diamond high profile, well-manicured and maintained locations containing a variety of plants, including tropical varieties, trees and flowers. At least two (2) locations shall include a minimum size of fifty (50) landscape acres.

TAB 3. TECHNICAL APPROACH

- A. Provide a brief description of the Proposer's approach to the project as it relates to the scope of services listed herein for routine services and for FEMA reimbursement declared emergency tasks

- B. Confirm the Proposer's agreement to meet the minimum requirements of this Request for Proposals and the Specification / Scope of Services herein.
- C. EQUIPMENT AND LOCAL OPERATIONS LOCATION

1. Describe the Proposer's current office/warehouse/staging area location that will be used to support the OCCC. The Proposer shall have a current in use and established commercial operation. Identify distance from the OCCC and response time from the office to the OCCC.
2. Provide detailed list of equipment/vehicles to be staged for use to fulfill this contract. The list shall include the equipment name, make, model, year, quantity, purchase dates and cost. Include pictures of owned equipment and VIN numbers for all vehicles to show proof of ownership or lease documentation in the Company's name. Contractor shall have, as a minimum the following equipment or equivalent:

Four (4) zero turn rotary mowers
 Two (2) walk behind or stand on mower
 Four (4) each of: string trimmers and backpack blowers
 Four (4) each of: long hedge shears and stick edgers
 Four (4) trailers for transporting equipment
 Three (3) pickup truck
 One (1) dump type truck
 Four (4) Utility Vehicles (ie, Kawasaki Mule, John Deere Gator)

The above represents an estimate of the equipment required to satisfactorily perform the services. However, a Proposer's detailed evaluation of the scope of services is required to accurately determine the actual type and quantity of equipment, tools, etc. required for the contract. The County reserves the right to visually inspect the equipment and place of business.

D. OPERATIONAL PLAN

1. A Detailed Operational Plan shall be submitted indicating how the Proposer, utilizing its staff and equipment will accomplish the required exterior landscape maintenance. This plan shall include all the elements required in the specifications for mowing, trimming, cutting, ground cover, plant beds, weeding, mulching, landscape enhancement installation, trash removal and irrigation.
2. The Operational Plan shall include specific detailed information regarding their staffing plan for the OCCC. The Proposer's plan shall include the number of scheduled personnel that would be required to be on site at the OCCC, Monday through Friday during standard business hours, broken out by day and by job type. At a minimum, the plan shall detail how many of the following types of workers shall be on site, in addition to complying with the requirements within the scope:

Minimum Requirement as follows:

- o Four (4) Detail Staff (Edging, trimming, pruning, sweeping, blowing of sidewalks, flower beds, etc.)
- o Six (6) Dedicated Mowing Crew
- o One (1) On-site/ Working Operations Supervisor (Required full time)
- o Two (2) Dedicated Irrigation Technician (Required full time)

The proposed number of staff assigned to the OCCC per this Operational Plan, shall not preclude, nor limit the Proposer from hiring/utilizing additional employees to ensure competent and effective performance of the duties within the scope of services.

3. For emergency staff, the Operational Plan shall include information as to how the Proposer will ensure that at least four (4) Detail Staff and two (2) Irrigation Technicians are available for on-call emergency responses after hours, on holidays, and on weekends.
4. The Operational Plan shall include information as to how the Proposer will ensure that all exterior landscape management services shall be performed, so as not to interfere with the OCCC events. The Operational Plan shall include specific information as to how the Proposer shall schedule work, including work performed during early morning hours, or after scheduled building events.
5. The Operational Plan shall ensure that exterior landscape management services shall not conflict with the OCCC events,
6. The Operational Plan shall include a copy of the Proposer's Quality Assurance plan. This plan shall detail systems and operational requirements to ensure that the work performed at the OCCC meets satisfactory levels of performance.
7. The Operational Plan shall also include a detailed description of the Proposer's training and safety program given to all employees. Samples of training documents and supporting records shall be included.

TAB 4. FEE SCHEDULE

Each proposer shall complete and submit the Fee Schedule included herein. **The hourly fees shall include ALL costs associated with performance of the contract including travel and out-of-pocket expenses.**

TAB 5. ORANGE COUNTY COMPLIANCE DOCUMENTATION

- A. **Proposal Cover Page** shall be completed and submitted with your proposal.
- B. **Current W9** shall be completed and submitted with your proposal.
- C. **Acknowledged Addenda(s) OR Acknowledgement of Addenda Form** shall be completed and submitted with your proposal.

- D. **Authorized Signatories/Negotiators Form** shall be completed and submitted with your proposal.
- E. **Drug-Free Workplace Form** shall be completed and submitted with your proposal.
- F. **Conflict/Non-Conflict of Interest Form** shall be completed and submitted with your proposal.
- G. **E-Verification Certification** shall be completed and submitted with your proposal.
- H. **Relationship Disclosure Form** – The purpose of this form is to document any relationships between a bidder, proposer or responder to an Orange County solicitation and the Mayor or any other member of the Orange County Board of County Commissioners. This form shall be completed and submitted with your proposal. The Proposer shall not be awarded a contract unless this form has been completed and submitted.
- I. **Orange County Specific Project Expenditure Report** -The purpose of this form is to document any expenses incurred by a lobbyist for the purposes described in Section 2-351, Orange County Code. This form shall be completed and submitted with any bid, proposal or other response to an Orange County solicitation. The Proposer shall not be awarded a contract unless this form has been completed and submitted.
- J. **Agent Authorization Form** (if Applicable) shall be completed and submitted with your proposal OR marked “Not Applicable.”
- K. **Leased Employee Affidavit** (if Applicable) shall be completed and submitted with your proposal OR marked “Not Applicable.”
- L. **Information for determining Joint Venture Eligibility** (if Applicable) shall be completed and submitted with your proposal OR marked “Not Applicable.”

TAB 6. FEDERAL COMPLIANCE DOCUMENTATION

- A. **Certification Regarding Lobbying for Contracts Grants, Loans, and Cooperative Agreements** (if Applicable) shall be completed and submitted with your proposal.
- B. **Schedule of Sub-contracting and Affidavit of Compliance with 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds)** (if sub-contracting) shall be completed and submitted with your proposal.
- C. **Federal Debarment Certification Form** shall be completed and submitted with your proposal.

SECTION 4
SELECTION CRITERIA

SELECTION CRITERIA

<u>CRITERIA</u>	<u>WEIGHT</u>
Qualifications of Staff	20
Qualifications of Firm	30
Technical Approach	30
<u>Fee Proposal</u>	<u>20</u>
TOTAL	100

SECTION 5
ATTACHMENTS

FEE SCHEDULE FORM

RFP#Y19-1131-AV

The Contractor shall provide all labor, equipment, manpower and other resources necessary to provide the goods and services in strict accordance with the scope of services, specifications defined in this solicitation for the amounts specified in this Fee Schedule Form.

The following items 1-24, shall not be used in the event the County requests services associated with a declared emergency as defined by the Federal Emergency Management Agency.

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
EXTERIOR LANDSCAPE SERVICE						
1.	EXTERIOR LANDSCAPE SERVICE (Service is to include mowing, weeding, edging, shrub trimming, weed-wacking, trimming, annual and bromeliad replacement, watering of urns, trash removal, etc.)	12 MONTHS	X \$ _____ /MO = \$ _____ /YR	X 3	= \$ _____	
2.	ANNUAL PRUNING OF CREPE MYRTLES	1 YEAR	X \$ _____ / YR = \$ _____ /YR	X 3	= \$ _____	
3.	MULCH	2500 CU YD PER YEAR	X \$ _____ /CU YD = \$ _____ /YR	X 3	= \$ _____	
4.	LABOR HOURS FOR ADDITIONAL WORK (move plants/trees/shrubs, removal of old beds, creation of new beds, etc).	3000 HOURS PER YEAR	X \$ _____ /HR = \$ _____ /YR	X 3	= \$ _____	

Company Name: _____

FEE SCHEDULE FORM (CONTINUED)

REPLACEMENT PLANTING

For materials and plants sizes not listed, the Betrock’s Plant Finder’s Guide (betrock.com) shall be referenced for any additional plants/materials requirements.

Annual estimated dollars of Plants/Materials plus percentage markup from cost using the latest edition of Betrock’s Plant Finders Guide:

ITEM NO.	YEARLY AMOUNT		UNIT PRICE (PERCENT)		YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
5.	\$150,000	X	_____ %	= \$	_____ /YR	X 3	= \$ _____

(Example: If the mark-up is 10% your total should be 150,000.00 X 1.10 = \$165,000.00 X 3 = \$495,000)

INSTALLATION FEE

Used for plants selected from Betrock’s Plant Finders Guide (Price to include removal of old plants. All sizes below will need to include plant cost, delivery, and installation):

ITEM NO.	CONTAINER SIZE IN GALLONS	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
6.	ONE GALLON	15,000	X \$ _____ /EA = \$ _____ /YR	X 3 = \$ _____		
7.	THREE GALLON	12,000	X \$ _____ /EA = \$ _____ /YR	X 3 = \$ _____		
8.	SEVEN GALLON	3,000	X \$ _____ /EA = \$ _____ /YR	X 3 = \$ _____		
9.	TEN GALLON	500	X \$ _____ /EA = \$ _____ /YR	X 3 = \$ _____		
10.	FIFTEEN GALLON	500	X \$ _____ /EA = \$ _____ /YR	X 3 = \$ _____		

Company Name: _____

FEE SCHEDULE FORM (CONTINUED)

Installation Fee continued

ITEM NO.	CONTAINER SIZE IN GALLONS	ESTIMATED QUANTITY		UNIT PRICE		YEARLY ESTIMATED PRICE		THREE YEARS		TOTAL ESTIMATED PROPOSAL		
11.	THIRTY GALLON	350	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
12.	FORTY-FIVE GALLON	350	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
13.	SIXTY-FIVE GALLON	100	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
14.	ONE-HUNDRED GALLON	100	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
15.	TWO-HUNDRED GALLON	75	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
16.	THREE-HUNDRED GALLON	150	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
17.	ANNUALS	10,000	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____
18.	BROMELIADS	500	X	\$	_____ /EA	=	\$	_____ /YR	X 3	=	\$	_____

IRRIGATION SERVICES

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED PROPOSAL
19.	IRRIGATION INSPECTIONS & REPORTS	12 MONTHS	X \$ _____ /MO = \$ _____ /YR	X 3	= \$ _____	

Company Name: _____

FEE SCHEDULE FORM (CONTINUED)

Irrigation Services Continued

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED BID
20.	SPRINKLER HEAD AND POP-UP REPAIRS BEYOND THE FLEXIBLE SUPPLY HOSE CONNECTION					\$5,000
21.	IRRIGATION REPAIRS – LABOR FOR ADDITIONAL WORK DURING STANDARD WORKING HOURS	6,500 HRS	X \$ _____ /HR = \$ _____ /YR	X 3	= \$ _____	
22.	IRRIGATION REPAIRS- LABOR FOR ADDITIONAL WORK DURING NON-STANDARD HOURS	100 HRS	X \$ _____ /HR = \$ _____ /YR	X 3	= \$ _____	

IRRIGATION MATERIALS

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE (PERCENT)	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED BID
23.	IRRIGATION MATERIALS MARK-UP OVER ACTUAL COST WITH DOCUMENTATION	\$75,000/YR	X _____ % = \$ _____ /YR	X 3	= \$ _____	

(Example: If the mark-up is **10%** your calculation should be 75,000.00 X 1.10 = \$82,500.00 Per Year X 3 = \$247,500)

24. UNFORSEEN FEES (equipment rental, taxes, permits, etc.) \$50,000

Company Name: _____

FEE SCHEDULE FORM (CONTINUED)

EMERGENCY SERVICES

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	YEARLY ESTIMATED PRICE	THREE YEARS	TOTAL ESTIMATED BID
(The following items 25-28, shall only be used in the event the County requests services associated with a declared emergency as defined by the Federal Emergency Management Agency and shall not be used with items 1-24)						
25.	EMERGENCY-Labor during standard working hours	5,000 HRS	X \$ _____	= \$ _____/YR	X 3	= \$ _____
26.	EMERGENCY – Labor during non-standard working hours	2,500 HRS	X \$ _____	= \$ _____/YR	X 3	= \$ _____
27.	EMERGENCY – debris disposal with legible dump tickets, at cost					\$40,000
28.	EMERGENCY – parts, equipment rental, and supplies at cost with back up 3 rd party invoice.					\$40,000
TOTAL ESTIMATED BID (ITEMS 1-28)						\$ _____

Company Name: _____

PROPOSAL COVER PAGE

Company Name: _____

NOTE: COMPANY NAME MUST MATCH LEGAL NAME ASSIGNED TO TIN
NUMBER. CURRENT W9 MUST BE SUBMITTED WITH PROPOSAL.

TIN#: _____ D-U-N-S® # _____

(Street No. or P.O. Box Number) (Street Name) (City)_____
(County) (State) (Zip Code)

Contact Person: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

EMERGENCY CONTACT

Emergency Contact Person: _____

Telephone Number: _____ Cell Phone Number: _____

Residence Telephone Number: _____ Email: _____

ACKNOWLEDGEMENT OF ADDENDA

The Proposer shall acknowledge receipt of any addenda issued to this solicitation by completing the blocks below or by completion of the applicable information on the addendum and returning it not later than the date and time for receipt of the proposal. Failure to acknowledge an addendum that has a material impact on this solicitation may negatively impact the responsiveness of your proposal. Material impacts include but are not limited to changes to specifications, scope of work/services, delivery time, performance period, quantities, bonds, letters of credit, insurance, or qualifications.

Addendum No._____, Date_____ Addendum No._____, Date_____

Addendum No._____, Date_____ Addendum No._____, Date_____

Addendum No._____, Date_____ Addendum No._____, Date_____

Addendum No._____, Date_____ Addendum No._____, Date_____

AUTHORIZED SIGNATORIES/NEGOTIATORS

The Proposer represents that the following **principals** are authorized to sign proposals, negotiate and/or sign contracts and related documents to which the proposer will be duly bound. Principal is defined as an employee, officer or other technical or professional in a position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Name	Title	Telephone Number/Email
------	-------	------------------------

(Signature)	(Date)
(Title)	
(Name of Business)	

The Proposer shall complete and submit the following information with the proposal:

Type of Organization

☐ Sole Proprietorship ☐ Partnership ☐ Non-Profit
☐ Joint Venture* ☐ Corporation

(a)

(b) **State of Incorporation:** _____

Principal Place of Business (Florida Statute Chapter 607): _____
City/County/State

THE PRINCIPAL PLACE OF BUSINESS SHALL BE THE ADDRESS OF THE PROPOSER'S PRINCIPAL OFFICE AS IDENTIFIED BY THE FLORIDA DIVISION OF CORPORATIONS.

Federal I.D. number is: _____

* *Joint venture firms must complete and submit with their Proposal Response the form titled "Information for Determining Joint Venture Eligibility", and a copy of formal written and executed Joint Venture agreement between all joint venture parties. This joint venture agreement must be executed and indicate the parties' respective roles, responsibilities and levels of participation for the project. **If proposing as a Joint Venture, the Joint Venture shall obtain and maintain all contractually required insurance in the name of the Joint Venture as required by the Contract. Individual insurance in the name of the parties to the Joint venture will not be accepted.** Failure to timely submit the required form along with the formal written and executed Joint Venture agreement may result in disqualification of your Proposal Response.*

DRUG-FREE WORKPLACE FORM

The undersigned Proposer, in accordance with Florida Statute 287.087 hereby certifies that
_____ does:

Name of Business

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Florida Statute 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs 1 thru 5.

As the person authorized to sign this statement, I certify that this firm complies fully with above requirements.

Proposer's Signature

Date

CONFLICT/NON-CONFLICT OF INTEREST STATEMENT**CHECK ONE**

☐ To the best of our knowledge, the undersigned proposer has no potential conflict of interest due to any other clients, contracts, or property interest for this project.

OR

☐ The undersigned proposer, by attachment to this form, submits information which may be a potential conflict of interest due to other clients, contracts, or property interest for this project.

LITIGATION STATEMENT**CHECK ONE**

☐ The undersigned proposer has had no litigation and/or judgments entered against it by any local, state or federal entity and has had no litigation and/or judgments entered against such entities during the past ten (10) years.

☐ The undersigned proposer, **BY ATTACHMENT TO THIS FORM**, submits a summary and disposition of individual cases of litigation and/or judgments entered by or against any local, state or federal entity, by any state or federal court, during the past ten (10) years.

COMPANY NAME

AUTHORIZED SIGNATURE

NAME (PRINT OR TYPE)

TITLE

Failure to check the appropriate blocks above may result in disqualification of your bid. Likewise, failure to provide documentation of a possible conflict of interest, or a summary of past litigation and/or judgments, may result in disqualification of your bid.

Contract No.Y19-1131-AV

I hereby certify that I will utilize the U.S. Department of Homeland Security’s E-Verify system in accordance with the terms governing the use of the system to confirm the employment eligibility of the individuals classified below. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duties shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida statutes.

All persons, including subcontractors and their workforce, who will perform work under **Contract No.Y19-1131-AV**, LANDSCAPE MANAGEMENT AND IRRIGATION AT THE ORANGE COUNTY CONVENTION CENTER, within the state of Florida.

NAME OF CONTRACTOR: _____

ADDRESS OF CONTRACTOR: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

**RELATIONSHIP DISCLOSURE FORM
FOR USE WITH PROCUREMENT ITEMS, EXCEPT THOSE WHERE THE COUNTY
IS THE PRINCIPAL OR PRIMARY PROPOSER**

For procurement items that will come before the Board of County Commissioners for final approval, this form shall be completed by the Proposer and shall be submitted to the Procurement Division by the Proposer.

In the event any information provided on this form should change, the Proposer must file an amended form on or before the date the item is considered by the appropriate board or body.

Part I

INFORMATION ON PROPOSER:

Legal Name of Proposer:

Business Address (Street/P.O. Box, City and Zip Code):

Business Phone: ()_____

Facsimile: ()_____

**INFORMATION ON PROPOSER'S AUTHORIZED AGENT, IF APPLICABLE:
(Agent Authorization Form also required to be attached)**

Name of Proposer's Authorized Agent:

Business Address (Street/P.O. Box, City and Zip Code):

Business Phone: ()_____

Facsimile: ()_____

Part II

IS THE PROPOSER A RELATIVE OF THE MAYOR OR ANY MEMBER OF THE BCC?

___ YES ___ NO

IS THE MAYOR OR ANY MEMBER OF THE BCC THE PROPOSER'S EMPLOYEE?

___ YES ___ NO

IS THE PROPOSER OR ANY PERSON WITH A DIRECT BENEFICIAL INTEREST IN THE OUTCOME OF THIS MATTER A BUSINESS ASSOCIATE OF THE MAYOR OR ANY MEMBER OF THE BCC?

___ YES ___ NO

If you responded "YES" to any of the above questions, please state with whom and explain the relationship.

(Use additional sheets of paper if necessary)

Part III**ORIGINAL SIGNATURE AND NOTARIZATION REQUIRED**

I hereby certify that information provided in this relationship disclosure form is true and correct based on my knowledge and belief. If any of this information changes, I further acknowledge and agree to amend this relationship disclosure form prior to any meeting at which the above-referenced project is scheduled to be heard. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Signature of Proposer

Date

Printed Name and Title of Person completing this form:

STATE OF _____:
COUNTY OF _____:

I certify that the foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

Witness my hand and official seal in the county and state stated above on the _____ day of _____, in the year _____.

(Notary Seal)

Signature of Notary Public
Notary Public for the State of _____
My Commission Expires: _____

Staff signature and date of receipt of form

Staff reviews as to form and does not attest to the accuracy or veracity of the information provided herein.

FREQUENTLY ASKED QUESTIONS (FAQ)
ABOUT THE
RELATIONSHIP DISCLOSURE FORM
Updated 6-28-11

WHAT IS THE RELATIONSHIP DISCLOSURE FORM?

The Relationship Disclosure Form (form OC CE 2D and form OC CE 2P) is a form created pursuant to the County's Local Code of Ethics, codified at Article XIII of Chapter 2 of the Orange County Code, to ensure that all development-related items and procurement items presented to or filed with the County include information as to the relationship, if any, between the applicant and the County Mayor or any member of the Board of County Commissioners (BCC). The form will be a part of the backup information for the applicant's item.

WHY ARE THERE TWO RELATIONSHIP DISCLOSURE FORMS?

Form OC CE 2D is used only for development-related items, and form OC CE 2P is used only for procurement-related items. The applicant needs to complete and file the form that is applicable to his/her case.

WHO NEEDS TO FILE THE RELATIONSHIP DISCLOSURE FORM?

Form OC CE 2D should be completed and filed by the owner of record, contract purchaser, or authorized agent. Form OC CE 2P should be completed and filed by the proposer, offeror, quoter, or respondent, and, if applicable, their authorized agent. In all cases, the person completing the form must sign the form and warrant that the information provided on the form is true and correct.

WHAT INFORMATION NEEDS TO BE DISCLOSED ON THE RELATIONSHIP DISCLOSURE FORM?

The relationship disclosure form needs to disclose pertinent background information about the applicant and the relationship, if any, between, on the one hand, the applicant and, if applicable, any person involved with the item, and on the other hand, the Mayor or any member of the BCC.

In particular, the applicant needs to disclose whether any of the following relationships exist: (1) the applicant is a business associate of the Mayor or any member of the BCC; (2) any person involved with the approval of the item has a beneficial interest in the outcome of the matter *and* is a business associate of the Mayor or any member of the BCC; (3) the applicant is a relative of the Mayor or any member of the BCC; or (4) the Mayor or any member of the BCC is an employee of the applicant. (See Section 2-454, Orange County Code.)

HOW ARE THE KEY RELEVANT TERMS DEFINED?

Applicant means, for purposes of a development-related project, the owner, and, if applicable, the contract purchaser or owner's authorized agent. Applicant means, for purposes of a procurement item, the proposer, offeror, quoter, respondent, and, if applicable, the authorized agent of the proposer, offeror, quoter, or respondent.

Business associate means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. In addition, the term includes any person or entity engaged in or carrying on a business enterprise, or otherwise engaging in common investment, with a public officer, public employee, or candidate as a partner, member, shareholder, owner, co-owner, joint venture partner, or other investor, whether directly or indirectly, whether

through a Business Entity or through interlocking Parent Entities, Subsidiary Entities, or other business or investment scheme, structure, or venture of any nature. (See Section 112.312(4), Florida Statutes, and Section 2-452(b), Orange County Code.)

Employee means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors. (See Section 440.02(15), Florida Statutes.)

Relative means an individual who is related to a public officer or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the public officer or employee intends to form a household, or any other natural person having the same legal residence as the public officer or employee. (See Section 112.312(21), Florida Statutes.)

DOES THE RELATIONSHIP DISCLOSURE FORM NEED TO BE UPDATED IF INFORMATION CHANGES?

Yes. It remains a continuing obligation of the applicant to update this form whenever any of the information provided on the initial form changes.

WHERE DO THE RELATIONSHIP DISCLOSURE FORM AND ANY SUBSEQUENT UPDATES NEED TO BE FILED?

For a development-related item, the Relationship Disclosure Form and any update need to be filed with the County Department or County Division where the applicant filed the application. For a procurement item, the Relationship Disclosure Form and any update need to be filed with the Procurement Division.

WHEN DO THE RELATIONSHIP DISCLOSURE FORM AND ANY UPDATES NEED TO BE FILED?

In most cases, the initial form needs to be filed when the applicant files the initial development-related project application or initial procurement-related forms. However, with respect to a procurement item, a response to a bid will not be deemed unresponsive if this form is not included in the initial packet submitted to the Procurement Division.

If changes are made after the initial filing, the final, cumulative Relationship Disclosure Form needs to be filed with the appropriate County Department or County Division processing the application not less than seven (7) days prior to the scheduled BCC agenda date so that it may be incorporated into the BCC agenda packet. When the matter is a discussion agenda item or is the subject of a public hearing, and an update has not been made at least 7 days prior to BCC meeting date or is not included in the BCC agenda packet, the applicant is obligated to verbally present such update to the BCC when the agenda item is heard or the public hearing is held. When the matter is a consent agenda item and an update has not been made at least 7 days prior to the BCC meeting or the update is not included in the BCC agenda packet, the item will be pulled from the consent agenda to be considered at a future meeting.

WHO WILL REVIEW THE INFORMATION DISCLOSED ON THE RELATIONSHIP DISCLOSURE FORM AND ANY UPDATES?

The information disclosed on this form and any updates will be a public record as defined by Chapter 119, Florida Statutes, and may therefore be inspected by any interested person. Also, the information will be made available to the Mayor and the BCC members. This form and any updates will accompany the information for the applicant's project or item.

However, for development-related items, if an applicant discloses the existence of one or more of the relationships described above and the matter would normally receive final consideration by the Concurrency Review Committee or the Development Review Committee, the matter will be directed to the BCC for final consideration and action following committee review.

CONCLUSION:

We hope you find this FAQ useful to your understanding of the Relationship Disclosure Form. Please be informed that if the event of a conflict or inconsistency between this FAQ and the requirements of the applicable ordinance or law governing relationship disclosures, the ordinance or law controls.

Also, please be informed that the County Attorney's Office is not permitted to render legal advice to an applicant or any other outside party. Accordingly, if the applicant or an outside party has any questions after reading this FAQ, he/she is encouraged to contact his/her own legal counsel.

ORANGE COUNTY SPECIFIC PROJECT EXPENDITURE REPORT

This lobbying expenditure form shall be completed in full and filed with all application submittals. This form shall remain cumulative and shall be filed with the department processing your application. Forms signed by a principal's authorized agent shall include an executed Agent Authorization Form.

This is the initial Form: _____

This is a Subsequent Form: _____

Part I

Please complete all of the following:

Name and Address of Principal (legal name of entity or owner per Orange County tax rolls): _____

Name and Address of Principal's Authorized Agent, if applicable: _____

List the name and address of all lobbyists, Contractors, contractors, subcontractors, individuals or business entities who will assist with obtaining approval for this project. (Additional forms may be used as necessary.)

1. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
2. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
3. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
4. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
5. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
6. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
7. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____
8. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes ____ or No ____

Part II

Expenditures:

For this report, an "expenditure" means money or anything of value given by the principal and/or his/her lobbyist for the purpose of lobbying, as defined in section 2-351, Orange County Code. This may include public relations expenditures including, but not limited to, petitions, fliers, purchase of media time, cost of print and distribution of publications. However, the term "expenditure" **does not** include:

- Contributions or expenditures reported pursuant to chapter 106, Florida Statutes;
- Federal election law, campaign-related personal services provided without compensation by individuals volunteering their time;
- Any other contribution or expenditure made by or to a political party;
- Any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4), in accordance with s.112.3215, Florida Statutes; and/or
- Professional fees paid to registered lobbyists associated with the project or item.

The following is a complete list of all lobbying expenditures and activities (including those of lobbyists, contractors, Contractors, etc.) incurred by the principal or his/her authorized agent and expended in connection with the above-referenced project or issue. **You need not include de minimus costs (under \$50) for producing or reproducing graphics, aerial photographs, photocopies, surveys, studies or other documents related to this project.**

Date of Expenditure	Name of Party Incurring Expenditure	Description of Activity	Amount Paid
		TOTAL EXPENDED THIS REPORT	\$

Part III**Original signature and notarization required**

I hereby certify that information provided in this specific project expenditure report is true and correct based on my knowledge and belief. I acknowledge and agree to comply with the requirement of section 2-354, of the Orange County code, to amend this specific project expenditure report for any additional expenditure(s) incurred relating to this project prior to the scheduled Board of County Commissioner meeting. I further acknowledge and agree that failure to comply with these requirements to file the specific expenditure report and all associated amendments may result in the delay of approval by the Board of County Commissioners for my project or item, any associated costs for which I shall be held responsible. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Date

Signature of ☐ Principal or ☐ Principal's Authorized Agent
(check appropriate box)

Printed Name and Title of Person completing this form:

STATE OF _____:
COUNTY OF _____:

I certify that the foregoing instrument was acknowledged before me this
_____ day of _____, 20__ by _____. He/she is personally
known to me or has produced _____ as identification and did/did not
take an oath.

Witness my hand and official seal in the county and state stated above on
the _____ day of _____, in the year _____.

(Notary Seal)

Signature of Notary Public
Notary Public for the State of _____
My Commission Expires: _____

Staff signature and date of receipt of form

Staff reviews as to form and does not attest to the accuracy or veracity of the information
provided herein.

FREQUENTLY ASKED QUESTIONS (FAQ)
ABOUT THE
SPECIFIC PROJECT EXPENDITURE REPORT
Updated 3-1-11

WHAT IS A SPECIFIC PROJECT EXPENDITURE REPORT (SPR)?

A Specific Project Expenditure Report (SPR) is a report required under Section 2-354(b) of the Orange County Lobbying Ordinance, codified at Article X of Chapter 2 of the Orange County Code, reflecting all lobbying expenditures incurred by a principal and their authorized agent(s) and the principal's lobbyist(s), contractor(s), subcontractor(s), and Contractor(s), if applicable, for certain projects or issues that will ultimately be decided by the Board of County Commissioners (BCC).

Matters specifically exempt from the SPR requirement are ministerial items, resolutions, agreements in settlement of litigation matters in which the County is a party, ordinances initiated by County staff, and some procurement items, as more fully described in 2.20 of the Administrative Regulations.

Professional fees paid by the principal to his/her lobbyist for the purpose of lobbying need not be disclosed on this form. (See Section 2-354(b), Orange County Code.)

WHO NEEDS TO FILE THE SPR?

The principal or his/her authorized agent needs to complete and sign the SPR and warrant that the information provided on the SPR is true and correct.

A principal that is a governmental entity does not need to file an SPR.

HOW ARE THE KEY RELEVANT TERMS DEFINED?

Expenditure means "a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. This may include public relations expenditures (including but not limited to petitions, flyers, purchase of media time, cost of print and distribution of publications) but does not include contributions or expenditures reported pursuant to Chapter 106, Florida Statutes, or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4)." (See Section 112.3215, Florida Statutes.) Professional fees paid by the principal to his/her lobbyist for the purpose of lobbying are not deemed to be "expenditures." (See Section 2-354, Orange County Code.)

Lobbying means seeking "to encourage the approval, disapproval, adoption, repeal, rescission, passage, defeat or modification of any ordinance, resolution, agreement, development permit, other type of permit, franchise, vendor, Contractor, contractor, recommendation, decision or other foreseeable action of the [BCC]," and "include[s] all communications, regardless of whether initiated by the lobbyist or by the person being lobbied, and regardless of whether oral, written or electronic." (See Section 2-351, Orange County Code.) Furthermore, *lobbying* means communicating "directly with the County Mayor, with any other member of the [BCC], or with any member of a procurement committee." (See Section 2-351, Orange County Code.) *Lobbying* also

means communicating “indirectly with the County Mayor or any other member of the [BCC]” by communicating with any staff member of the Mayor or any member of the BCC, the county administrator, any deputy or assistant county administrator, the county attorney, any county department director, or any county division manager. (See Section 2-351, Orange County Code.) *Lobbying* does not include the act of appearing before a Sunshine Committee, such as the Development Review Committee or the Roadway Agreement Committee other than the BCC.

Principal means “the person, partnership, joint venture, trust, association, corporation, governmental entity or other entity which has contracted for, employed, retained, or otherwise engaged the services of a lobbyist.” *Principal* may also include a person, partnership, joint venture, trust, association, corporation, limited liability corporation, or other entity where it or its employees do not qualify as a lobbyist under the definition set forth in Section 2-351 of the Orange County Code but do perform lobbying activities on behalf of a business in which it has a personal interest.

DOES THE SPR NEED TO BE UPDATED IF INFORMATION CHANGES?

Yes. It remains a continuing obligation of the principal or his/her authorized agent to update the SPR whenever any of the information provided on the initial form changes.

WHERE DO THE SPR AND ANY UPDATES NEED TO BE FILED?

The SPR needs to be filed with the County Department or County Division processing the application or matter. If and when an additional expenditure is incurred subsequent to the initial filing of the SPR, an amended SPR needs to be filed with the County Department or County Division where the original application, including the initial SPR, was filed.

WHEN DO THE SPR AND ANY UPDATES NEED TO BE FILED?

In most cases, the initial SPR needs to be filed with the other application forms. The SPR and any update must be filed with the appropriate County Department or County Division not less than seven (7) days prior to the BCC hearing date so that they may be incorporated into the BCC agenda packet. (See Section 2-354(b), Orange County Code.) When the matter is a discussion agenda item or is the subject of a public hearing, and any additional expenditure occurs less than 7 days prior to BCC meeting date or updated information is not included in the BCC agenda packet, the principal or his/her authorized agent is obligated to verbally present the updated information to the BCC when the agenda item is heard or the public hearing is held. When the matter is a consent agenda item and an update has not been made at least 7 days prior to the BCC meeting or the update is not included in the BCC agenda packet, the item will be pulled from the consent agenda to be considered at a future meeting.

WHO WILL BE MADE AWARE OF THE INFORMATION DISCLOSED ON THE SPR AND ANY UPDATES?

The information disclosed on the SPR and any updates will be a public record as defined by Chapter 119, Florida Statutes, and therefore may be inspected by any interested person. Also, the information will be made available to the Mayor and the BCC members. This information will accompany the other information for the principal’s project or item.

CONCLUSION:

We hope you find this FAQ useful to your understanding of the SPR. Please be informed that in the event of a conflict or inconsistency between this FAQ and the requirements of the applicable ordinance governing specific project expenditure reports, the ordinance controls.

Also, please be informed that the County Attorney's Office is not permitted to render legal advice to a principal, his/her authorized agent, or any other outside party. Accordingly, if after reading this FAQ the principal, his/her authorized agent or an outside party has any questions, he/she is encouraged to contact his/her own legal counsel.

AGENT AUTHORIZATION FORM

I/We, (Print Proposer name) _____, Do hereby authorize (print agent's name), _____, to act as my/our agent to execute any petitions or other documents necessary to affect the CONTRACT approval PROCESS more specifically described as follows, (RFP NUMBER AND TITLE) _____, and to appear on my/our behalf before any administrative or legislative body in the county considering this CONTRACT and to act in all respects as our agent in matters pertaining TO THIS CONTRACT.

Signature of Proposer

Date

STATE OF _____ :
COUNTY OF _____ :

I certify that the foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

Witness my hand and official seal in the county and state stated above on the _____ day of _____, in the year _____.

(Notary Seal)

Signature of Notary Public

Notary Public for the State of _____

My Commission Expires: _____

LEASED EMPLOYEE AFFIDAVIT

I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the County in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the County with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any County jobsite.

I further agree to notify the County if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company:

Workers' Compensation Carrier:

A.M. Best Rating of Carrier:

Inception Date of Leasing Arrangement:

I further agree to notify the County in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the County that documents the change of carrier.

Name of Contractor:

Signature of Owner/Officer:

Title:

Date:

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

If the proposer is submitting as a joint venture, please be advised that this form **MUST** be completed and the **REQUESTED** written joint-venture agreement **MUST** be attached and submitted with this form.

HOWEVER, IF THE PROPOSER IS NOT A JOINT VENTURE, CHECK THE FOLLOWING BLOCK: () NOT APPLICABLE

1. Name of joint venture: _____

2. Address of joint venture: _____

3. Phone number of joint venture: _____

4. Identify the firms which comprise the joint venture: _____

5. Describe the role of the MWBE / Labor Surplus Area(LSA) Firm (if applicable) in the joint venture: _____

6. Provide a copy of the formal written and executed Joint Venture agreement.

7. What is the claimed percentage of ownership and identify any MWBE/LSA partners (if applicable)?

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY – PAGE 2

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement provided by question 6.)

(a) Profit and loss sharing:

(b) Capital contributions, including equipment:

(c) Other applicable ownership interests:

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

(a) Financial decisions: _____

(b) Management decisions, such as:

(1) Estimating:

(2) Marketing and sales:

(3) Hiring and firing of management personnel:

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY – PAGE 3

(4) Purchasing of major items or supplies:

(c) Supervision of field operations:

NOTE: If, after filing this form and before the completion of the joint venture's work on the subject contract, there is any significant change in the information submitted, the joint venture must inform the County in writing.

*** Joint venture must be properly registered with the Florida Division of Corporations before the contract award and the name of the Joint Venture must be the same name used in the Bid Response.**

AFFIDAVIT

"The undersigned swear or affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the County current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venture. Also, permit authorized representatives of the County to audit and examine records of the joint venture. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Firm: _____ Name of Firm: _____

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY – PAGE 4

Date _____
 State of _____
 County of _____

AFFIDAVIT

On this _____ day of _____, 20____, before me appeared (name) _____, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____
 Commission Expires _____

(Seal)

Date _____
 State of _____
 County of _____

On this _____ day of _____, 20____, before me appeared _____ (name), to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____
 Commission Expires _____

(Seal)

Page 215 of 600

SCHEDULE OF SUBCONTRACTING AND AFFIDAVIT OF COMPLIANCE WITH 2 CFR §200.321 REQUIREMENTS
(OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS)

Section 1.02 Y19-1131-AV

I, _____, in my capacity as _____, am authorized to sign on behalf of, and fully bind,
(First and Last Name) (Company Title/Position)

_____(the "Prime Contractor"). Accordingly, on behalf of the Prime Contractor, I swear to, and affirm the following:
(Company Name)

- ✓ Qualified small and minority businesses, and women's business enterprises were, and will continue to be, placed on all of the Prime Contractor's solicitation lists.
- ✓ The Prime Contractor solicited, and will continue to solicit, small and minority businesses, and women's business enterprises, when they were/are potential sources.
- ✓ Based on the Prime Contractor's experience and expertise, the total requirements of the project were, and will continue to be, divided when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- ✓ The Prime Contractor has and/or will establish delivery schedules that will encourage participation of small and minority business, and women's business enterprises.
- ✓ The Prime Contractor has and/or will use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- ✓ I understand that failure to present documentation validating compliance upon request of the County may result in this proposal being deemed non-responsive.
- ✓ I understand that, should the Prime Contractor be the awarded the contract that this affidavit will continue to be considered binding for the duration of the project.

Name of Subcontractor <i>(attach additional pages as necessary)</i>	Address	Type of Work to be Performed	Percent and dollar amount of Contract Amount to be Subcontracted

I understand that false statements on this Affidavit of Compliance may result in criminal prosecution for a felony of the third degree as provide for in §92.525(3), Florida Statutes.

SIGNATURE	PRINTED NAME	OFFICIAL TITLE	DATE
STATE OF _____)	The foregoing instrument was acknowledged before me this		NOTARY
COUNTY OF _____)	_____ day of _____ 20____, by _____		_____
	on behalf of the corporation.		Signature
	Personally Known [] or Produced Identification []		_____
(Seal)	Type of Identification Produced: _____		Printed Name

NOTE: SMALL AND MINORITY-OWNED, WOMEN-OWNED BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS SHALL NOT BE EXEMPT FROM COMPLYING WITH THE AFFIRMATIVE STEPS OUTLINED IN 2 CFR §200.321 (OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS) FOR SUB-CONTRACTING.

**CERTIFICATION REGARDING LOBBYING FOR CONTRACTS,
GRANTS, LOANS, AND COOPERATIVE AGREEMENTS
APPENDIX A, 44 C.F.R. PART 18**

(To be submitted with each bid or offer exceeding \$100,000)

The following certification and disclosure regarding payments to influence certain federal transactions are made per the provisions contained in 31 U.S.C 1352, the **“Byrd Anti-Lobbying Amendment.”**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Name and Title of Contractor’s Authorized Official

Date

FEDERAL DEBARMENT CERTIFICATION FORM

**Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180.

**(BEFORE COMPLETING CERTIFICATION, READ THE INSTRUCTIONS ON
THE WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)**

- (1) The prospective recipient of Federal assistance funds certifies, by Response, that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Response.

ATTESTATION

By signing this report, I certify to the best of my knowledge and belief that the foregoing is true, complete, and accurate. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Sections 3729-3730 and 3801-3812).

Company Name

Name and Title of Authorized Representative

Signature

Date

FEDERAL DEBARMENT CERTIFICATION FORM (CONTINUED)**Instructions for Certification**

1. By signing and submitting this Response, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this Response is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The prospective recipient of Federal assistance funds agrees by submitting this Response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
5. The prospective recipient of Federal assistance funds further agrees by submitting this Response that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

CONTRACT # Y19-1131

This Contract is made as of the ____ day of _____, 2020 by and between Orange County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the COUNTY, and _____
 [] an individual, [] a partnership, [] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. or Social Security number is _____. This contract is subject to change based on guidance from the Federal funding source.

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide professional/consultation services in the area of LANDSCAPE MANAGEMENT AND IRRIGATION AT THE ORANGE COUNTY CONVENTION CENTER, as more specifically set forth in the Scope of Services detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Liz Frias, telephone no. 407-685-5854.

ARTICLE 2 SCHEDULE

The CONTRACTOR shall commence services on _____ 2020 and complete all services by _____ 2023.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

This contract may be renewed, for two (2) additional one (1) year periods upon mutual written agreement of the parties at the same prices, terms and conditions. Any change in price, terms or conditions shall be accomplished by written amendment to this contract.

Any order issued during the effective date of this contract, but not completed within that period, shall be completed by the CONTRACTOR within the time specified in the order. The contract shall govern the CONTRACTOR and the COUNTY'S rights and obligations with respect to the extent as if the order were completed during the contract's performance period.

ARTICLE 3 PAYMENTS TO CONTRACTOR (USE FOR TERM CONTRACT)

- A. The total amount to be paid by the COUNTY under this Contract for the base period, shall not exceed _____ Dollars (\$_____). The CONTRACTOR will notify the COUNTY, in writing, when 90% of the estimated contract amount has been reached. The CONTRACTOR will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Services. Where incremental billing for partially completed items is permitted, the total incremental billings shall not exceed the percentage of estimated completion as of the billing date.
- B. Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the initiating County Department, indicating that services have been rendered in

conformity with the Contract and then will be sent to the Finance Department for payment. Invoices will be paid in accordance with the State of Florida Local Government Prompt Payment Act.

A valid invoice shall include the following:

1. Reference to the Delivery Order Number
2. Delivery Dates/ Service Dates
3. Itemization of Goods Delivered/ Services Rendered
4. Unit Prices in accordance with Exhibit "A"
5. Back up documentation as required

C. Final Invoice: In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/last billing to the COUNTY. This certifies that all services have been properly performed and all charges and costs have been invoiced to Orange County. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR.

ARTICLE 4 REQUIREMENTS CONTRACT

This is a Requirements Contract and the COUNTY shall order from the CONTRACTOR all of the supplies and/or services specified in the contract's price schedule that are required to be purchased by the COUNTY. If the COUNTY urgently requires delivery of goods or services before the earliest date that delivery may be required under this contract, and if the CONTRACTOR will not accept an order providing for accelerated delivery, the COUNTY may acquire the goods or services from another source.

Except as this contract may otherwise provide, if the COUNTY'S requirements do not result in orders in the quantities described as "estimated" in the contract's price schedule, that fact shall not constitute the basis for an equitable adjustment.

ARTICLE 5 INSURANCE REQUIREMENTS

Vendor/Contractor agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor/Contractor is not intended to and shall not in any manner limit or qualify the liabilities assumed by Vendor/Contractor under this contract. Vendor/Contractor is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.

The Vendor/Contractor shall require and ensure that each of its sub-Vendors/sub-Contractors providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better.

(Note: State licenses can be checked via www.floir.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com)

Required Coverage:

- ☒ Commercial General Liability - The Vendor/Contractor shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than **\$1,000,000** (one million dollars) per occurrence. Vendor/Contractor further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

Required Endorsements:

- ☒ Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations
- ☒ Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.
Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.
- ☒ Business Automobile Liability - The Vendor/Contractor shall maintain coverage for all owned; non-owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than **\$1,000,000** (one million dollars) per accident. In the event the Vendor/Contractor does not own automobiles the Vendor/Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Required Endorsements:

- ☒ Workers' Compensation - The Vendor/Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Any Vendor/Contractor using an employee leasing company shall complete the Leased Employee Affidavit.

Required Endorsements:

- ☒ Waiver of Subrogation- WC 00 03 13 or its equivalent
- ☒ Pesticide Herbicide Application Liability- with a limit of not less than \$1, 000,000 per occurrence/claim
OR
- ☒ Pollution Liability- with a limit of not less than \$1,000,000 per occurrence/claim

When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of Vendor/Contractor most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the Vendor/Contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the Vendor/Contractor agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the Vendor/Contractor of the obligation to provide replacement coverage.

By entering into this contract Vendor/Contractor agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the County for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit the Vendor/Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Vendor/Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

Prior to execution and commencement of any operations/services provided under this contract the Vendor/Contractor shall provide the COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the Vendor/Contractor shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the Orange County Board of County Commissioners.

For continuing service contracts renewal certificates shall be submitted immediately upon request by either the COUNTY or the COUNTY's contracted certificate compliance management firm. The certificates shall clearly indicate that the Vendor/Contractor has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. Vendor/Contractor shall notify the COUNTY not less than thirty (30) business days (ten business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The Vendor/Contractor shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to the COUNTY or its certificate management representative five (5) business days prior to the effective date of the replacement policy (ies).

The certificate holder shall read:

Orange County Board of County Commissioners
c/o Procurement Division
400 E. South Street, 2nd Floor
Orlando, Florida 32801

ARTICLE 6 INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the CONTRACTOR or its subcontractors (if any), anyone directly or

indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the COUNTY.

ARTICLE 7 FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employee FICA and Social Security benefits with respect to this Contract.

ARTICLE 8 AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners, or other specified funding source for this procurement.

ARTICLE 9 CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes 112.311. The CONTRACTOR further represents that no person having any interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of the notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

ARTICLE 10 UNIFORM COMMERCIAL CODE

The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the CONTRACTOR and the COUNTY for any terms and conditions not specifically stated in this Contract.

ARTICLE 11 TERMINATION

A. Termination for Default:

The COUNTY may, by written notice to the CONTRACTOR, terminate this contract for default in whole or in part (delivery orders, if applicable) if the CONTRACTOR fails to:

1. Provide products or services that comply with the specifications herein or fails to meet the COUNTY'S performance standards
2. Deliver the supplies or to perform the services within the time specified in this contract or any extension.
3. Make progress so as to endanger performance of this contract
4. Perform any of the other provisions of this contract.

Prior to termination for default, the COUNTY will provide adequate written notice to the CONTRACTOR through the Manager, Procurement, affording them the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CONTRACTOR in accordance with the County's Procurement Ordinance. The CONTRACTOR and its sureties (if any) shall be liable for any damage to the COUNTY resulting from the CONTRACTOR's default of the contract. This liability includes any increased costs incurred by the COUNTY in completing contract performance.

In the event of termination by the COUNTY for any cause, the CONTRACTOR will have, in no event, any claim against the COUNTY for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONTRACTOR shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work as directed by the COUNTY.
4. Continue and complete all parts of that work that have not been terminated.

Neither CONTRACTOR nor COUNTY shall be liable, nor may cancel this contract for default, when delays arise out of causes beyond the control of CONTRACTOR or COUNTY. Such causes may include but are not restricted to acts of God, acts of COUNTY in sovereign capacity, fires, floods, lightning strikes, epidemics, quarantine restrictions, strikes, freight embargoes, wars, civil disturbances, work stoppage, power failures, laws, regulations, ordinances, acts or orders of any governmental agency or official thereof, and unusually severe weather. In every case, the delay must be beyond the control of the claiming party. If CONTRACTOR is delayed in its performance as a result of the above causes, COUNTY, shall upon written request of CONTRACTOR, agree to equitably adjust the provisions of this contract, including price and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit COUNTY'S right to terminate for convenience.

B. Termination for Convenience

The COUNTY, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If this contract is terminated, the COUNTY shall be liable only for goods or services delivered and accepted. The COUNTY Notice of Termination shall provide the CONTRACTOR thirty (30) days prior notice before it becomes effective. **A termination for convenience may apply to individual delivery orders, purchase orders or to the contract in its entirety.**

1. **FORCE MAJEURE - EMERGENCY RESPONSE CONTRACTS**

The Contractor shall not be held responsible for any delay and/or failure in performance of any part of this contract to the extent such delay or failure is caused by explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond the Contractor's control so long as the Contractor's delay is not caused by the Contractor's own fault or negligence. That notwithstanding, the Contractor shall notify the County in writing within forty-eight (48) hours after the beginning of any such cause that would affect its performance hereunder and the County reserves the right the request additional information that supports the validity of the Contractor's Force Majeure claim. Failure to notify the County in a timely manner of any claim of Force Majeure made pursuant to this section is cause for termination of this contract.

2. If the Contractor's performance is delayed pursuant to this section for a period exceeding ten (10) calendar days from the date the County receives the required Force Majeure notice, the County shall have the right to terminate this contract thereafter and shall only be liable to the Contractor for any work performed and validated (if required for payment hereunder) prior to the date of the County's contract termination.
3. **As the nature of this contract relates to emergency and/or natural disaster response (including, but not limited to, hurricanes), the Contractor is expected, as part of the Contractor's obligations hereunder, to be mobilized and prepared to perform immediately after a natural disaster emergency and/or event. As a result, delays and/or failures in performance on the Contractor's part that are in any way related to natural disaster conditions (ie: fuel shortages, airport closures, lodging shortages, etc.) shall not be considered valid claims of Force Majeure under this section.**
4. If the Contractor's performance is delayed pursuant to this section, the County may, upon written request of the Contractor, agree to equitably adjust the provisions of this contract, including price, performance, and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit the County's right to terminate for convenience.

ARTICLE 12 PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereafter shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. The COUNTY may require, in writing, that the CONTRACTOR remove from this contract any employee the COUNTY deems incompetent, careless, or otherwise objectionable.

ARTICLE 13 TRUTH IN NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall act as the execution of the truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside Contractors. The COUNTY shall exercise its right under this "Certificate" within one (1) year following final payment.

ARTICLE 14 ARREARS

The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 15 DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the COUNTY, or at its expense, will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced at the discretion of the COUNTY.

The COUNTY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 16 INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and

control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than as specifically provided for in this Agreement.

ARTICLE 17 CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retrained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract 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 CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 18 ACCESS AND AUDITS

The CONTRACTOR shall establish and maintain a reasonable accounting system, which enables ready identification of CONTRACTOR'S cost of goods and use of funds. Such accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of this contract. The COUNTY or its designee shall have access to such books, records, subcontract(s), financial operations, and documents of the CONTRACTOR or its sub-Contractors as required to comply with this section for the purpose of inspection or audit anytime during normal business hours at the CONTRACTOR'S place of business. This right to audit shall include the CONTRACTOR'S sub-Contractors used to procure goods or services under the contract with the COUNTY. CONTRACTOR shall ensure the COUNTY has these same rights with sub-Contractor(s) and suppliers.

ARTICLE 19 EQUAL OPPORTUNITY

It is hereby declared that equal opportunity and nondiscrimination shall be the County's policy intended to assure equal opportunities to every person, regardless of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-314 of the Orange County Code and the County Administrative Regulations.

Further, the CONTRACTOR shall abide by the following provisions:

- A. The CONTRACTOR shall represent that the CONTRACTOR has adopted and maintains a policy of nondiscrimination as defined by applicable County ordinance throughout the term of this contract.
- B. The CONTRACTOR shall allow reasonable access to all business and employment records for the purpose of ascertaining compliance with the non-discrimination provision of the contract.
- C. The provisions of the prime contract shall be incorporate by the CONTRACTOR into the contracts of any applicable subcontractors.

ARTICLE 20 SCRUTINIZED COMPANIES

- A. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes.
- B. Specifically, by executing this Agreement, the Contractor certifies that it is **not** on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
- C. Additionally, if this Agreement is for an amount of one million dollars (\$1,000,000) or more, by executing this Agreement, the Contractor certifies that it is **not**:
 - 1. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473, Florida Statutes; and/or
 - 2. Engaged in business operations in Cuba or Syria.
- D. The County reserves the right to terminate this Agreement immediately should the Contractor be found to:
 - 1. Have falsified its certification of eligibility to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes; and/or
 - 2. Have become ineligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the County.
- E. If this Agreement is terminated by the County as provided in subparagraph 4(a) above, the County reserves the right to pursue any and all available legal remedies against the Contractor, including but not limited to the remedies as described in Section 287.135, Florida Statutes.
- F. If this Agreement is terminated by the County as provided in subparagraph 4(b) above, the Contractor shall be paid only for the funding-applicable work completed as of the date of the County’s termination.
- G. Unless explicitly stated in this Section, no other damages, fees, and/or costs may be assessed against the County for its termination of the Agreement pursuant to this Section.

ARTICLE 21 MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY’S notification of a contemplated change, the CONTRACTOR shall (1) if requested by COUNTY, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY in writing if the contemplated change shall affect the CONTRACTOR’S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall issue a Contract Amendment or Change Order and the CONTRACTOR shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 22 CONTRACT CLAIMS

"Claim" as used in this provision means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

Claims made by a Contractor/Contractor against the County relating to a particular contract shall be submitted to the Procurement Manager in writing clearly labeled "Contract Claim" requesting a final decision. The Contractor also shall provide with the claim a certification as follows: "I certify that the claim is made in good faith;

that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor/Contractor believes the County is liable; and that I am duly authorized to certify the claim on behalf of the Contractor/Contractor."

Failure to document a claim in this manner shall render the claim null and void. Moreover, no claim shall be accepted after final payment of the contract.

The decision of the Procurement Manager shall be issued in writing and shall be furnished to the Contractor/Contractor. The decision shall state the reasons for the decision reached. The Procurement Manager shall render the final decision within sixty (60) days after receipt of Contractor's/Contractor's written request for a final decision. The Procurement Manager's decision shall be final and conclusive.

The Contractor/Contractor shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal or action arising under the contract and shall comply with any final decision rendered by the Manager of Procurement.

ARTICLE 23 TOBACCO FREE CAMPUS

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to contractors and their personnel during contract performance on county-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

ARTICLE 24 VERIFICATION OF EMPLOYMENT STATUS

Prior to the employment of any person under this contract, the contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of (a) all persons employed during the contract term by the contractor to perform employment duties within Florida and (b) all persons, including subcontractors, assigned by the contractor to perform

work pursuant to the contract with Orange County. Please refer to USCIS.gov for more information on this process.

Only those employees determined eligible to work within the United States shall be employed under the contract.

Therefore, by submission of a bid or proposal in response to this solicitation, the contractor confirms that all employees in the above categories will undergo e-verification before placement on this contract. The contractor further confirms his commitment to comply with this requirement by completing the E- Verification certification.

ARTICLE 25 LAWS AND REGULATIONS

All applicable Federal and State laws, municipal and County ordinances shall apply to the solicitation and Contract.

ARTICLE 26 PRICE ESCALATION/DE-ESCALATION (CPI)

The County may allow a price escalation provision within this award. The original contract prices shall be firm for the entirety of the initial (3 year) contract period. A price escalation/de-escalation will be considered at the time of contract renewal and at renewal intervals thereafter, provided the Contractor notifies the County, in writing, of the pending price escalation/de-escalation a minimum of sixty (60) days prior to the contract renewal date. Price adjustments shall be based on the latest version of the Consumers Price Index (CPI-U) for All Urban Consumers, All Items, U.S. City Average, non-seasonal, as published by the U.S. Department of Labor, Bureau of Labor Statistics. This information is available at www.bls.gov.

Price adjustment shall be calculated by applying the simple percentage model to the CPI data. This method is defined as subtracting the base period index value (at the time of initial award) from the index value at time of calculation (latest version of the CPI published as of the date of request for price adjustment), divided by the base period index value to identify percentage of change, then multiplying the percentage of change by 100 to identify the percentage change. Formula is as follows:

$$\text{Current Index} - \text{Base Index} / \text{Base Index} = \% \text{ of Change}$$

$$\% \text{ of Change} \times 100 = \text{Percentage Change}$$

CPI-U Calculation Example:

CPI for current period	232.945
Less CPI for base period	229.815
Equals index point change	3.130
Divided by base period CPI	229.815
Equals	0.0136
Result multiplied by 100	0.0136 x 100
Equals percent change	1.4%

A price increase may be requested only at each time interval specified above, using the methodology outlined in this section. To request a price increase, Contractor shall submit a letter stating the percentage amount of the requested increase and adjusted price to the Orange County Procurement Division. The letter shall include the complete calculation utilizing the formula above, and a copy of the CPI-U index table used in the calculation. The maximum allowable increase shall not exceed 4%, unless authorized by the Manager, Procurement Division. If approved, the price adjustment shall become effective on the contract renewal date. All price adjustments must be accepted by the Manager, Procurement Division and shall be memorialized by written amendment to this contract. No retroactive contract price adjustments will be allowed.

Should the CPI-U for All Urban Consumers, All Items, U.S City Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics decrease during the term of the contract, or any renewals, the Contractor shall notify the Orange County Procurement Division of price decreases in the method outlined above. If approved, the price adjustment shall become effective on the contract renewal date. If the Contractor fails to pass the decrease on to the County, the County reserves the right to place the Contractor in default, cancel the award, and remove the Contractor from the County Vendor List for a period of time deemed suitable by the County. In the event of this occurrence, the County further reserves the right to utilize any options as stated herein.

ARTICLE 27 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

By executing this contract Respondent affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

ARTICLE 28 SUB-CONTRACTING AND COMPLIANCE WITH 2 CFR §200.321 (OR 45 C.F.R. §75.330 FOR HEALTH AND HUMAN SERVICES FUNDS)

If the CONTRACTOR wishes to engage in sub-contracting, pursuant to this Acknowledgment, the CONTRACTOR understands that it must first: (1) get written permission from the COUNTY'S Procurement Manager or their designee to enter into such a subcontract; and (2) execute an affidavit stating that the CONTRACTOR took the "Five Affirmative Steps" regarding Small and Minority Business Enterprise, Women Business Enterprises, and Labor Surplus Area Firms as required by the Federal Government in the solicitation and selection of such subcontractor. **Engaging in sub-contracting, pursuant to this Acknowledgment without complying with both of these requirements is strictly prohibited.**

Small and minority-owned, women-owned business enterprises, and labor surplus area firms shall not be exempt from complying with the "affirmative steps" outlined in 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) when sub-contracting.

ARTICLE 29 FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS.

By executing this contract the Respondent affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

ARTICLE 30 BUSINESS ASSOCIATE AGREEMENT

The Business Associate Agreement attached hereto shall govern all matters necessary to enforce the provisions of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164 as applicable to this contract.

ARTICLE 31 ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- A. The contractor agrees to provide Orange County, the State of Florida, the Federal Emergency Management Agency (FEMA) Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

ARTICLE 32 DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

ARTICLE 33 COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS)

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE 34 NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

ARTICLE 35 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**ARTICLE 36 CONDITIONS FOR EMERGENCY/HURRICANE OR DISASTER -
TERM CONTRACTS**

It is hereby made a part of this contract that before, during and after a public emergency, disaster, hurricane, flood, or other acts of God that Orange County shall require a “first priority” basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public health and safety, as determined by the County. Contractor agrees to rent/sell/lease all goods and services to the County or other governmental entities as opposed to a private citizen, on a first priority basis. The County expects to pay contractual prices for all goods or services required during an emergency situation. Contractor shall furnish a twenty-four (24) hour phone number in the event of such an emergency.

**ARTICLE 37 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND
REQUIREMENT TO INFORM EMPLOYEES OF
WHISTLEBLOWER RIGHTS (APR 2014**

- A. This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- B. The Subrecipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- C. The Subrecipient shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed thirty-five thousand dollars (\$35,000) in value.

ARTICLE 38 ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the Parties shall each bear their own costs, expert fees, attorneys’ fees, and other fees incurred in connection with this Agreement and any litigation that arises either directly, or indirectly.

ARTICLE 39 JURY WAIVER

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement.

ARTICLE 40 GOVERNING LAW AND VENUE

Any and all legal actions associated with this contract will be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be in the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.

ARTICLE 41 NO REPRESENTATIONS

Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither

party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

ARTICLE 42 AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to, conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

ARTICLE 43 SEVERABILITY

The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependencies a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

ARTICLE 44 SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONTRACTOR.

ARTICLE 45 REMEDIES

This Contract shall be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be the Circuit Court in and for Orange County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or at equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 46 ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, deleted, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 47 NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

and if sent to the CONTRACTOR shall be mailed to:

ARTICLE 48 ATTACHMENTS

The following attachment(s) is/are attached hereto, and made a part of this Contract in order of precedence:

- A. Exhibit A – Fee Schedule
- B. Attachment 1 – LEED EB + OM Certification Documents
- C. Attachment 2 – OCCC Landscaping Samples – 4 Star Quality
- D. Attachment 3 – Site Maps

IN WITNESS WHEREOF, the Board of County Commissioners of Orange County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

CONTRACTOR:

ORANGE COUNTY, FLORIDA:

Company Name

Carrie Mathes, MPA, CFCM, CPPO, C.P.M.,
Procurement Division Manager

Signature

Date

Typed Name

Title

Date

Attachment 1 – LEED EB + OM Certification Documents**Integrated Pest Management, Erosion Control, and
Landscape Management Plan****SECTION 1: SCOPE**

This plan provides guidelines for protecting and enhancing the natural diversity of the Orange County Convention Center's North/South Building Site (OCCC), while also supporting high-performance building operations and developing synergies between the building and its environmental context. The project is located at 9899 International Drive, Orlando, FL. The Integrated Pest Management (IPM), Erosion Control, and Landscape Management Plan apply to the entire building and associated grounds.

SECTION 2: GOALS

Goals include minimizing the impact of site management practices on the local ecosystem and reducing exposure of occupants, staff, and maintenance personnel to potentially hazardous chemical, biological, and particle contaminants. All practices and services must also comply with the with municipal regulations including the Orange County Fertilizer Management Ordinance [2009-26] passed October 6, 2009 to restrict use of nitrogen or phosphorus, as well to minimize pollution & runoff of harmful chemicals into stormwater systems, water bodies, and aquifers. Per the Orange County Ordinance, Landscape Management, Irrigation Management & Fertilizer Application Contractors are required to attend the Green Industries Best Management Practices (GIBMP) educational program for Green Industry workers provided by UF-IFAS Florida-Friendly Landscaping™ program. Contractors & Service Providers are also required to attain the Commercial Applicator Certification at the end of the program and demonstrate compliance and adoption of the GIBMP Manual.

The Plan addresses environmental best practices for:

- Outdoor Integrated Pest Management & Pesticide Application (IPM)
- Erosion and Sedimentation Control during construction activities and daily operations
- Landscape Operations and Waste
- Fertilizer use

SECTION 3: RESPONSIBLE PARTIES

The OCCC Facility Operations Department, with support from the Facility Operations Manager and the following Facility Operations Staff, Assistant Operations Manager and Assistant Supervisors are responsible for developing and managing the implementation of the IPM, Erosion Control, and Landscape Management Plan. Contracts with pest and landscape management contractors and construction contractors shall include extensive language describing their role in implementing the building's plan. Contractors involved with various elements of the plan shall carry out their tasks according to their contracts and report all relevant activities to the responsible parties when required. To ensure an

effective and coordinated effort, OCCC staff responsible for overseeing the plan shall review all proposed activities before implementation.

Function	Company Name	Primary Contact	Phone	Technical Contact	Phone
Indoor/Outdoor Pest Control	To Be Determined				
Landscape Management	To Be Determined				
Fertilizer	To Be Determined				
Landscape Design	Horticulture Consultant	Larry Smith	407.491.9529	n/a	n/a
Erosion & Sedimentation	OCCC Capital Planning	Tim Groth	407.685.5705	n/a	n/a
Stormwater Maintenance	OCCC Facility Maintenance	Robert Foster	407.685.5644	n/a	n/a
Indoor/Outdoor Perimeter Pest Management	To Be Determined				
Pest Control Contract Manager	OCCC Environmental Services	Pam Cavanaugh	407.685.5879	N/A	N/A
Policy Support	OCCC Sustainability	Abby Gulden	407.685.8009	N/A	N/A

SECTION 4: QUALITY ASSURANCE CONTROL PROCESS

The Facility Operations Maintenance Coordinator, Sustainability Coordinator and Designees will periodically evaluate effectiveness and compliance of this plan by providing an annual report to the Facility Operations Manager, which includes an evaluation of the performance, safety, cost and environmental/public health benefits achieved as a result of policy implementation.

As delegated in Section 3, OCCC Facility Operations Department shall review all proposed all activities before implementation to ensure effectiveness and compliance with this policy. Additionally, OCCC Facility Operations Department will communicate strategies and criteria with personnel and contractors, conduct inspections and evaluations, and annually review all practices and products to identify opportunities for improvement and expansion of grounds maintenance practices.

Contractors involved in this plan shall submit all information about proposed practices to the Facility Operations Manager or his designee her through detailed contractual language or addenda/memorandum that establishes protocol(s) that will be used onsite. Upon reviewing proposed activities, the responsible parties shall determine compliance with the plan.

Violations and Non-Compliant practices will be addressed in the same manner as stated in the Orange County Fertilizer Management Ordinance [2009-26] and Florida Department of Environmental Protection (FDEP) Stormwater Plan.

SECTION 5: PERFORMANCE METRIC

This plan along with Orange County's National Pollutant Discharge Elimination System (NPDES) permit, Stormwater Pollution Prevention Guidelines, and GIBMP educational program govern all components of E&S control at the project building and site. The practices identified in this plan shall be wholly adopted and used in 100% of the construction and routine site maintenance/operations scenarios at OCCC.

SECTION 6: IPM STRATEGIES AND PRACTICES

Additional best practices and procedures implemented at the OCCC by staff and associated contractors appear on page 8 of this document.

a. Integrated Methods

OCCC requires Pest Prevention Programs that combine knowledge of pest behavior and biology with thorough inspections of the service environment to create service plans that are custom to the current needs. Inspections must include identifying; Conditions that are conducive to pest activity, the true sources of pest activity, and the avenues of pest entry from the true source into the service environment. Population monitoring, physical removal of the pest(s), trapping, sanitation recommendations, structural modifications and exclusionary steps must be considered prior to making material (pesticide) applications. Continued monitoring and trend analysis must be utilized to resolve ongoing or repeat pest occurrences.

As calls for pests reports are logged, Environmental Services staff shall survey the area of the report and upon routine visit, the Contractor shall review service log and call log for identification of report and history. Contractor shall always investigate area of report, identify issues, and notify Environmental services supervisor prior to performing work. No application of pesticides shall take place unless approved by OCCC Environmental Services.

Following integrated methods and pest prevention service methods below is the inspection criteria that must be used by contractors during routine service visits. Contractor shall report findings regarding:

Conditions conducive to pests

- Excess moisture/standing water/ water leaks
- Sanitation deficiencies/ food debris present
- Storage practices favor pest development
- Structural gaps or access noted
- Lighting attracting pest to structure

Avenues of pest access

- Ornamental plants touching structure
- Caulking/sealing/screening required
- Air doors absent or non-functional
- Windows/doors left open
- Weather-strips/thresholds/doors weeps worn

Sources causing pests to develop

- Waste compactor area needs cleaning
- Floor drains needs attention
- Beverage tap areas need attention
- Sanitation deficiencies/Food debris present
- Debris outside

b. Least-Toxic Pesticides

When monitoring and investigation activities above reveal a need for the use of pest controls, appropriate control options will be evaluated, and the least-toxic option likely to be effective will be employed. These guidelines also apply to any pesticide product, other than rodent bait, which is applied in a self-contained, enclosed bait station that is neither visible nor accessible. Contractors shall report changes or updates to the approved list of chemicals and the MSDS files located at Environmental Services. Least-toxic pesticides as defined by the City of San Francisco's Pesticide Hazard Screening List are recommended for use during times of need and any products that fall outside those classifications must be submitted for approval to the Environmental Services Supervisor and Sustainability Coordinator prior to use.

c. Universal Notification

The OCCC has adopted a pest reporting program which allows occupants to call OCCC Environmental Services dispatch and report any presence of unwanted pests. OCCC Environmental Services will act according to the standards set forth in the above and investigate the situation before any pesticide application is made or contractor technician is called. In addition, the OCCC universal notification system in place enables occupants and staff, and especially high-risk occupants such as children, pregnant women and the elderly, to modify their work plans, work days, work locations based on pesticide use at the building. This strategy requires the OCCC to notify building occupants at least 72 hours in advance of a pesticide application under normal circumstances and no more than 24 hours after an emergency application through posted signs or other means of reaching 100 percent of occupants potentially affected. This notification must be exercised if a pesticide, other than a least-toxic pesticide as defined above, must be applied on site. Notification must include the following:

- Pesticide product name; Active ingredient; Product label signal word (e.g., "caution", "danger"); Time and location of application; Contact information for persons seeking more information

d. Emergency Conditions

In the event of an emergency, pesticides may be applied at the OCCC without complying with the earlier stipulations for use of integrated and least-toxic methods.

In this event, notice must be given to the OCCC Environmental Services Supervisor. OCCC Environmental Services shall alert and inform any occupants that might be affected directly or indirectly before application and again after application for 24 hours. OCCC Environmental services supervisor shall keep record of such situations as to document the OCCC's ongoing compliance with the IPM Plan. Emergencies are defined as those that would immediately and directly impact the health of occupants (guests and staff) and/or impede the operation of the facility or portion off as intended or contractually obligated.

e. Recordkeeping

Recordkeeping is required to demonstrate ongoing compliance with the IPM plan. All applications of pesticides (include least-toxic options) shall be logged. The pesticide application log shall include the following information:

- | | |
|---------------------------------------|-------------------------------|
| ▪ Universal Notification to Occupants | ▪ Location |
| o Date | ▪ Target Pest |
| o Time | ▪ Pesticide Trade Name |
| o Method | ▪ Pesticide Active Ingredient |
| o Pesticide Application Date and Time | ▪ EPA Registration Number |
| o Application Manager | ▪ Least-toxic status (Y/N) |

SECTION 7: EROSION AND SEDIMENTATION CONTROL

OCCC's goal is to protect water and air quality through prevention of soil erosion and sedimentation. Meeting erosion and sedimentation (E&S) objectives includes the establishment of E&S control plans during any infrastructure repairs or other construction activities that result in ground disturbance, as well as ongoing maintenance of the facility's site to prevent soil erosion and sediment transfer.

a. During Construction Activities

All construction activities affecting soil disturbance greater than 1 Acre shall have E&S control provisions included the specifications and drawings. These provisions shall include all state, local, and federally applicable regulations as deemed appropriate by the engineer of record. Some of these provisions are referred in this next section as well as at the end of this document.

All construction projects must comply with the minimum requirements set by 2003 EPA Construction General Permit, but more importantly the Florida Department of Environmental Protection (FDEP) 2009 Construction Generic Permit. The conditions of that permit meet and exceed the EPA requirements. If EPA's proposed amendments scheduled in 2011 pass, once again, FDEP's version will meet and exceed those requirements – particularly the turbidity levels. Additionally,

within Orange County's NPDES Permit there are local requirements to be aware of and must comply that can be viewed within the OC EPD NPDES Permit Guidelines referred to at the end of this document. Finally, project team must also follow OCCC Construction Stormwater Prevention Plan that is site specific and modeled after FDEP guidelines.

b. During Routine Site Maintenance and Operations

The stormwater ongoing maintenance audits and frequencies are designed to align with the LEED SSc6 Stormwater Management credit criteria as well as Orange County Environmental Protection Division and State of Florida best practices for maintenance of stormwater systems. The Facility Operations department shall retain stormwater management auditor certifications for at least one staff member and host occasional training programs sponsored by the Orange county NPDES team. In-house audits of systems take place biannually and orange County Compliance biennially.

The site has the following existing controls for erosion and sedimentation control and stormwater management:

- Dry and Wet: Bottom Swales, Retention Ponds, Detention ponds
- Biofiltering via aquatic Plants
- Strict State and County regulations and requirements. (referred above)
- Memorandums of Understanding with existing contractors communicating efforts and regulations.

When deteriorated conditions compromise the efficacy of existing controls, the methods listed in the construction specification apply to the operations and maintenance work.

During significant weather events, soil and organic debris can build up in stormwater drainage systems; routine inspections and maintenance facilitate a fast response to erosion issues and limit the harmful environmental impacts of erosion and sedimentation. A regular inspection of existing controls shall be performed and logged to ensure that deficiencies are identified and remedied. This includes an annual inspection of the controls listed above, as well as more frequent inspection of the following:

- Inspection for standing water and drainage problems following major rainfall events
- Semi-annual inspection and cleaning of roof drains
- Inspection of storm sewers after major rainfall for evidence of sedimentation
- Please refer to the OCCC Stormwater Operations and Maintenance Annual Inspection.

c. Washing of Vehicles - Environmental Regulations

The washing of vehicles for display purposes is prohibited within any OCCC interior location or OCCC paved exterior location (parking lot or road). Runoff water from vehicle washing must not enter any area storm drains, which are located within close proximity to OCCC paved roadways and dock basins. Vehicle washing is only permitted on designated grassy area, where water runoff can filter through the ground, per local environmental standards.

SECTION 8: LANDSCAPE MAINTENANCE PRACTICES

a. Landscape Waste

All non-infested landscaped waste shall be diverted from landfill, both to minimize the amount of waste sent to landfills and to create compost, soil amendments or mulch. Contractor shall be responsible for proper sorting and delivery to mulching or compost facility. Grass clippings, small leaves and light pruning debris shall be returned into lawn areas on site and large tree debris or diseased plant material should be collected and hauled offsite for proper disposal or mulching.

b. Performance Metric

The practices identified in this plan shall be wholly adopted and used in ALL landscape management activities at OCCC. Contractors shall report diversion metrics on a quarterly basis to OCCC Facility Operations Manager or his designee. This report must show compliance of the 100% diversion threshold through mulching/compost and waste metrics by weight per month. The Facility Operations Manager or his designee shall perform continuous monitoring of this activity.

c. Practices to optimize landscape waste

- Landscape Management and Tree Removal Contractor shall collect landscape waste, including, but not limited to, leaves, cut vines, and pruned branches. Waste shall be brought to an off-site facility for mulching and composting.
 - o Contractor will leave clippings on turf areas to recycle nutrients and will distribute large clumps of clippings by blowing or by collecting and removing them.
 - o Clippings shall NOT be blown into impervious surfaces including: parking lots, other built up areas, gutters or stormwater drains
 - o In the case of fungal disease outbreaks, contractor will collect clippings until the disease is undetectable

d. Practices to optimize landscape maintenance

- Crew leaders and management staff are trained and certified in the Green Industries Best Management Practices.

- Contractors shall demonstrate compliance and adoption of FL-DEP GI-BMP manual.
- Contractors shall provide ongoing technical contributions to FL-DEP GI-BMP manual and training program.
- Contractors shall not mow wet turf to prevent spread of disease and fungus, and clippings can clog the machine.
- When feasible, use mulches made from environmentally friendly sources or recycled materials.
- Contractors shall not pile mulch against a tree or around the bases to prevent crown and root rot. Maintain a 2"-3" depth of mulch after settling.
- Contractors shall not direct clippings into bodies of water or onto impervious surfaces. Remove any clippings that are blown onto sidewalks, driveways, and other impervious areas.
- Clippings discharge shoots shall point away from any water bodies or stormwater drains.
- Contractors shall avoid mechanical damage to trees and shrubs from string trimmers, mowers, and other equipment by using equipment only when necessary.
- Contractors shall only mix fuel/oil at offsite warehouse and may refuel only when necessary using drop cloths and spill proof containers.
- Contractors shall inspect all equipment weekly and all fleet monthly for leaks or emissions.
- If spill occurs, contractor shall use on board spill kit, and other dry practices such as cat litter.

e. Native and Florida Friendly Plants

OCCC is committed to reducing irrigation water use on the management controlled landscaped areas. In support of that, the site uses 100% reclaimed water for irrigation and utilizes native or Florida friendly plant species that are well-suited for the local climate and require minimal irrigation, fertilization, and maintenance. These plantings are integrated into the site landscape when new plantings are installed or reseeding occurs.

The OCCC has approved plantings designated by the following reputable resources and organizations based on the USDA Hardiness Zone 9B Florida. Contractors must refer to the databases and lists within the below websites regarding any re-landscaping or new plantings onsite. Sections of the site that fall out of management scope must abide by the International Drive Improvement District Landscaping Standards.

- Florida Native Plant Society – Native Planting Database
http://www.fnps.org/pages/plants/plants_by_county.php?county=OSCEOLA
- FDEP and UF-IFAS Florida Yards Program
<http://www.floridayards.org/fyplants/index.php>

- The Lady Bird Johnson Wildflower Center, The University of Texas at Austin: Native Plant Database <http://www.wildflower.org/plants/>

SECTION 9: FERTILIZER USE

All fertilizer application shall be compliant with municipal regulations including the Orange County Fertilizer Management Ordinance [2009-26] passed October 6, 2009 to restrict use of nitrogen or phosphorus, as well to minimize pollution & runoff of harmful chemicals into stormwater systems, water bodies, and aquifers. Application Contractor will find this ordinance attached to service contracts along with this plan.

Per the OC Ordinance, Application Contractor is required to attend the Green Industries Best Management Practices educational program for Green Industry workers (lawn-care and landscape maintenance professionals), provided by UF-IFAS Florida-Friendly Landscaping™ program and Florida Department of Environmental Protection (FL-DEP). Contractors & Service Providers are also required to attain the Commercial Applicator Certification at the end of the program.

Fertilizer use shall be kept to a minimum in effort to prevent pollution and runoff in local ponds and streams. Only phosphate free and non-carcinogenic fertilizers from the approved chemical list below shall be applied on the grounds. Application Contractor shall assume responsibility for administering the application of fertilizer on the building grounds. Contractor will work with OCCC Facility Maintenance staff to optimize.

a. Performance Metric

The practices listed below will be implemented. If 100% adoption of the practice is not met, the performance metrics indicated will be used to gauge performance against the implementation target. The performance metrics and implementation targets for each element are compiled in the following table and described in the sections following.

b. Compliance with County Ordinance

The following “highlights” are excerpts from Orange County Fertilizer Management Ordinance [2009-26] and must be complied with at all times. Application Contractor must be familiar with scope and refer to the ordinance language for explanation. Refer to source document for full scope.

Section 15-803. Weather and Seasonal Restrictions

- No fertilizer containing nitrogen shall be applied to turf unless at least fifty (50) percent of its nitrogen content is slow release as indicated on the Guaranteed Analysis label, with no more than one pound (lb.) total nitrogen per 1,000 square feet of area per application.

- No fertilizer containing nitrogen or phosphorus shall be applied to turf during severe thunderstorm, flood tropical storm, and hurricane warnings, watch or advisories:

Section 15-804. Fertilizer Content; Application Rate

- No fertilizer containing phosphorus shall be applied to turf. Provided, however, where phosphorus deficiency has been demonstrated in the soil underlying the turf by a soil analysis test performed by a State of Florida-certified laboratory

Section 15-805. Fertilizer-Free Zones

- No fertilizer shall be applied within ten (10) feet of any lake, pond, stream, water body, water course, wetland or canal.
- No fertilizer shall be deposited, washed, swept, or blown off – intentionally or inadvertently – onto any impervious surface, public right-of-way, public property, stormwater drain, ditch, conveyance, or water body

Section 15-806. Mode of Application. Broadcast spreaders applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from all impervious surfaces, rights-of-way, stormwater drains, ditches, conveyances, and water bodies.

Section 15-807. Grass Clippings and Vegetative Material/Debris.

- Grass clippings and/or vegetative material/debris shall not be deposited, washed, swept, or blown off – intentionally or inadvertently – onto any impervious surface, public right-of-way, stormwater drain, ditch, conveyance, or water body.

Section 15-809. Commercial Training Requirement-Proof of Compliance.

- References Green Industries Best Management Practices educational program for Green Industry workers

c. Practices to Optimize Fertilizer Use

OCCC considers the following practices as best practices for Landscape and Fertilizer contractors and expects them to perform and report on their efforts.

Contractor Certification & Initiatives

- Front line applicators are certified in the Green Industries Best Management Practices)
- Contractors shall demonstrate compliance and adoption of FL-DEP GI-BMP manual
- Contractors shall provide ongoing technical contributions to FL-DEP GI-BMP manual and training program.

- Contractors shall be Certified Statewide Instructors and education providers of the GI-BMP program
- Contractors shall be active partners in the EPA PESP program (Pesticide Environmental Stewardship Program).

Fertilizer Products & Chemicals

- Contractors shall minimize the use of chemical applications and use best judgment of when deemed necessary.
- Contractors shall prohibit chemical use containing nitrogen, high phosphorus, probable carcinogens and sensitizers that could easily move into groundwater.
- Contractors shall use of 100% Phosphorous free chemicals and only apply phosphorus when a soil test dictates the need.
- Contractors shall consider using low-phosphorus organic fertilizers when feasible, however to not violate the phosphorus guidelines in the Orange County Ordinance. Many organic fertilizers contain high levels of osphorus and would violate the Orange County Fertilizer Management Ordinance [2009-26] referred to above.
- Contractors shall minimize spills by mixing and loading concentrates at off-site central distribution center by a trained mixer/loader following a precise fill chart developed by Regional Technical manager.

Applicator Equipment - Shrubs, palms, and groundcover

- Contractor liquid spray equipment shall be configured to deliver large spray droplets to minimize drift. Equipment shall have dual line injection system which allows applying pesticides only when a pest is present or there is a history of pests.
- Granular products shall be applied with a rotary spreader with a deflector shield to keep products off of driveways, sidewalks, and other impervious surfaces.
- Contractor equipment fleet shall have an on-demand injection system to reduce the use of pre-mixtures of pesticides.

SECTION 10: LANDSCAPE BMPs METRICS

Function	Site Management Products/Materials	Performance Metric	Implementation Target
Landscape	Grass Clippings and Vegetative Material/Debris	No Debris deposited, washed, swept, or blown off onto any impervious surface, stormwater drain, ditch, conveyance, or water body	100 % Complete Adoption
Landscape	Manual Weeding and Pruning	Manual methods prior to mowing and ornamental plant maintenance.	100 % Complete Adoption

Landscape	Native & Florida Friendly Plantings	% of Managed Landscaped Areas	100 % Complete Adoption
Landscape	Returning loose clippings	% of returned or mulched grass clippings, small leaves and light pruning debris into lawn areas	100 % Complete Adoption
Landscape	Material/Debris Diversion	% of quarterly landscape waste and debris diverted from landfill	100 % Complete Adoption
Landscape	Onsite Fuel spill prevention	80% Offsite fuel mixing and filling	80% of the time
Landscape	Litter removal	100% removal of litter around entire site	100% of the time

REFERENCES

1. Orange County Fertilizer Management Ordinance [2009-26] passed October 6, 2009
2. Florida Department of Environmental Protection (FDEP) Stormwater Plan
3. EPA 2003 Construction General Permit:
<http://cfpub.epa.gov/npdes/stormwater/swppp.cfm>
4. FLDEP 2009 Construction Generic Permit:
<http://www.dep.state.fl.us/water/stormwater/npdes/docs/cgp.pdf>
5. Orange County Environmental Protection Division NPDES Permit Guidelines:
6. <http://www.orangecountyfl.net/YourLocalGovernment/CountyDepartments/CommunityandEnvironmentalServices/EnvironmentalProtectionDivision/Sections/LandandWaterResources/ForContractorsandFacilityManagers.aspx>
7. OCCC Construction Stormwater Plan
8. OCCC Stormwater Operations and Maintenance Annual Inspection Checklist.
9. UF-IFAS Green Industries Best Management Practices Educational Program
http://fyn.ifas.ufl.edu/professionals/BMP_overview.htm
10. UF-IFAS Green Industries Best Management Practices Training
<https://gibmp.ifas.ufl.edu/>
11. *Florida Native Plant Society – Native Planting Database*
http://www.fnps.org/pages/plants/plants_by_county.php?county=OSCEOLA FDEP and UF-IFAS Florida Yards Florida Yards Program
<http://www.floridayards.org/fyplants/index.php>
12. The Lady Bird Johnson Wildflower Center, The University of Texas at Austin: Native Plant Database <http://www.wildflower.org/plants/>
13. Least-toxic pesticides are defined by: City of San Francisco's Hazard Tier 3 criteria (least hazardous):
www.up3project.org/documents/2007rpplbyaicomplete.pdf.

Attachment 2 – OCCC Landscaping Samples – 4 Star Quality

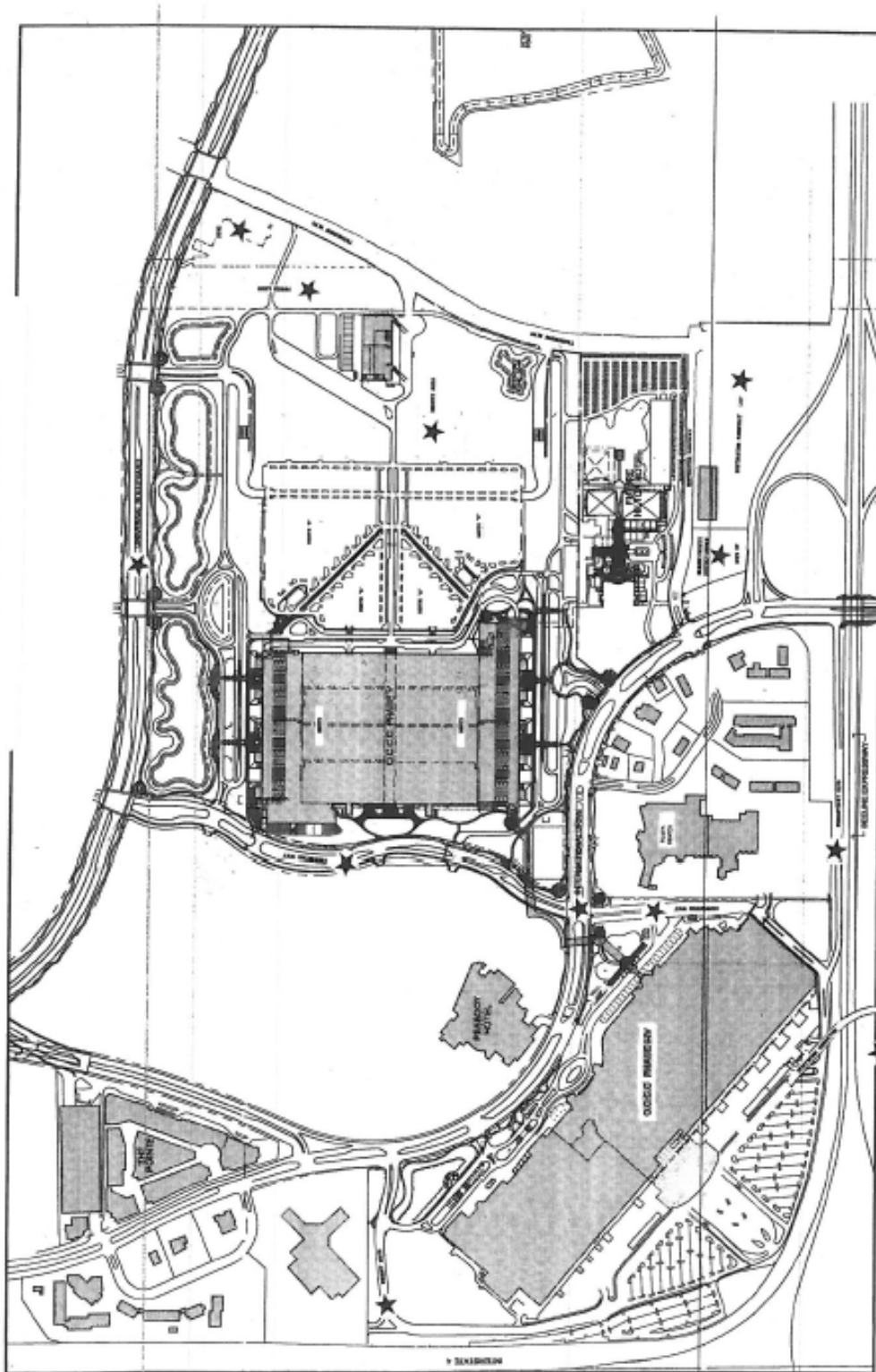






ATTACHMENT 3
SITE MAPS

OCCC SITE MAP

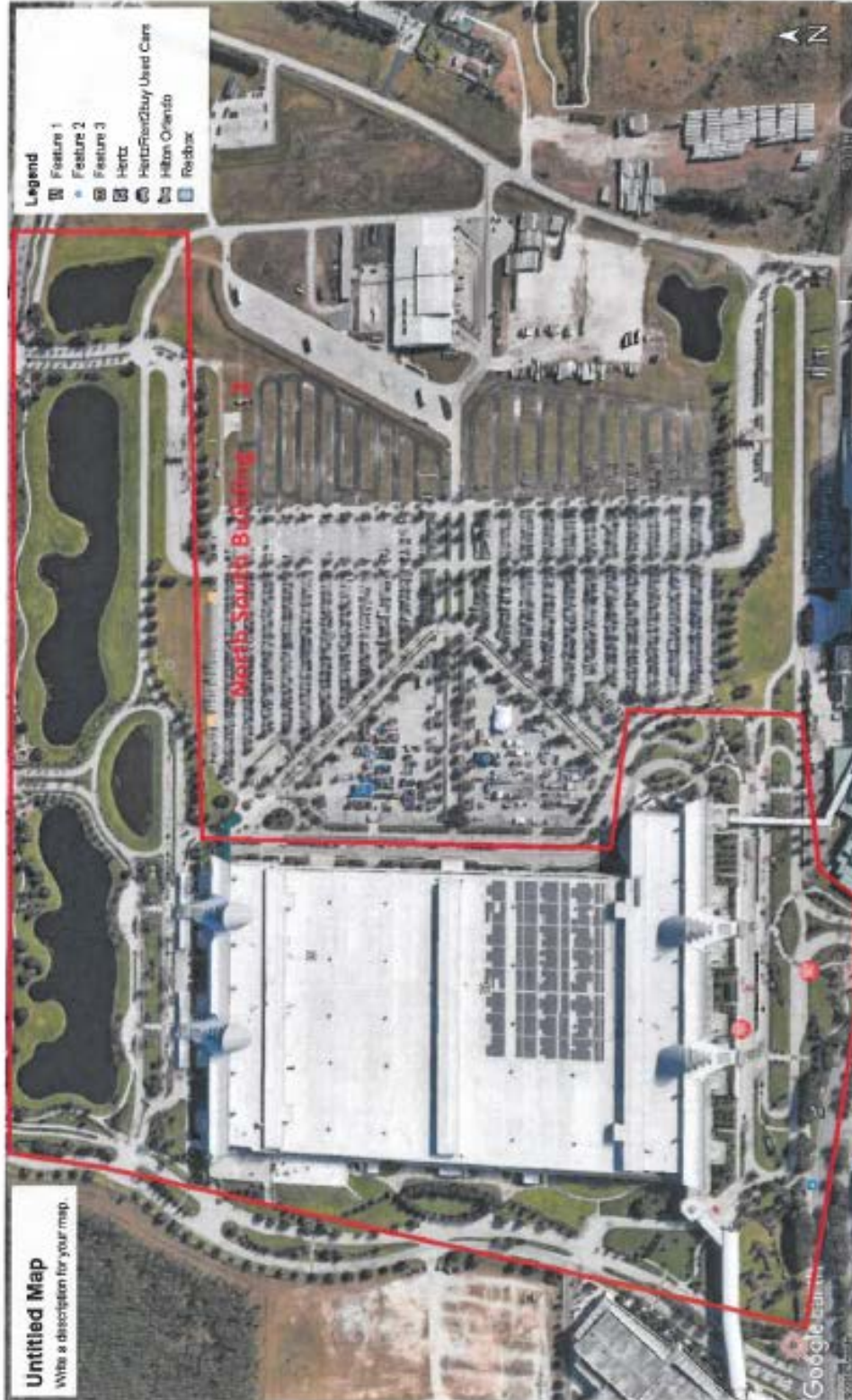


Orange County Convention Center
Site Plan





OCCC WEST BUILDING



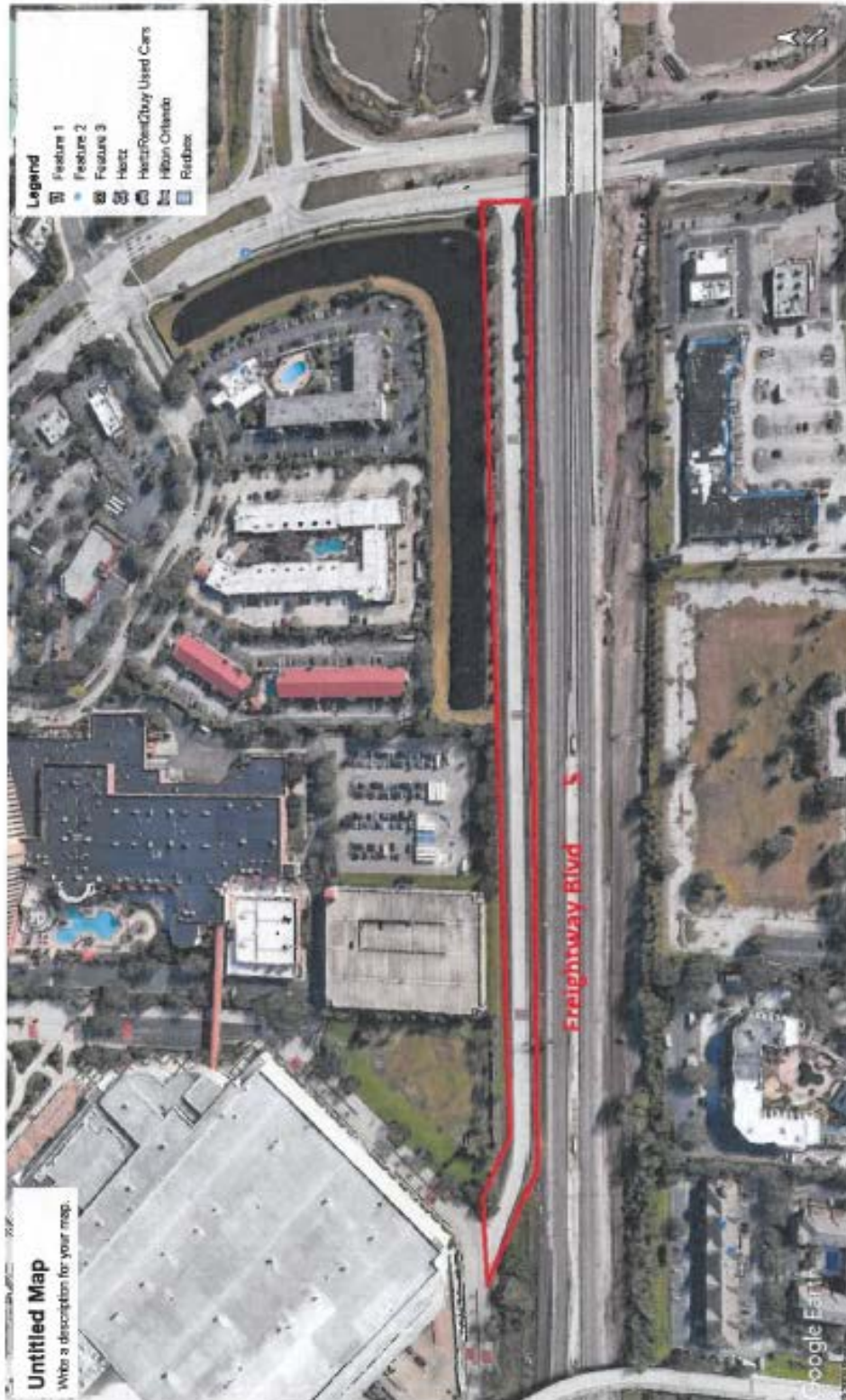
OCCC NORTH/SOUTH BUILDING



REMOTE AREA



ORANGEWOOD LOT



FREIGHTWAY BLVD.



TRADESHOW BLVD.



CONVENTION WAY



WESTWOOD CONNECTOR



TAXI CAB STAGING AREA



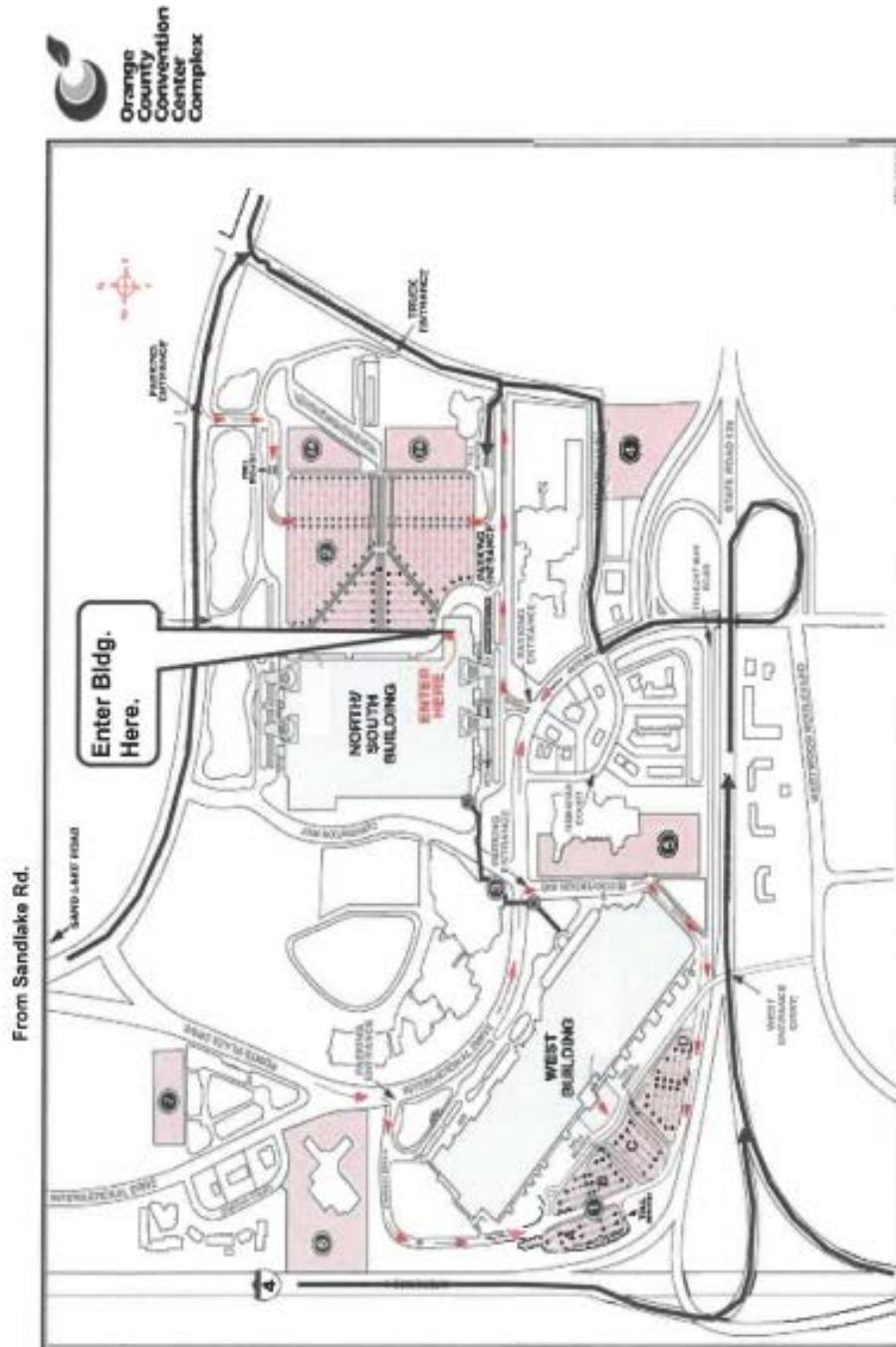
POWER LINE



DESTINATION PARKWAY

ATTACHMENT 4
PARKING PASS AND MAP





From I-4: Exit onto the B-line, 528 East, toward the airport. Exit on the International Dr. exit and turn right onto International Drive. At the second traffic light, turn right onto Destination Parkway and follow it around to the rear of the N/S parking facility. Enter the parking lot (on your left) in the first set of Toll Booths (South side). Proceed to the side of the lot nearest the South end of the building and enter at level 2. The first meeting room on your right is S230H.

From Bee Line West Bound: Exit onto Universal Boulevard and turn right (Northbound). Travel approximately 3/4 mile and turn left onto Tradeshow Blvd. and proceed to the South Toll Booths (on your right). Proceed to the side of the lot nearest the South end of the building and enter at level 2. The first meeting room on your right is S230H.

From Sandlake Rd: Turn left on to Universal Boulevard and travel approximately 1 1/2 miles, past the new North/South Building, and turn right onto Tradeshow Blvd. Proceed to the South Toll Booths (on your right). Proceed to the side of the lot nearest the South end of the building and enter at level 2. The first meeting room on your right is S230H.



862 Maguire Rd. Ocoee, Florida 34761
Ph: 407-877-7473 Fax: 407-877-8670
E-Mail: Groundtek@cfl.rr.com

PROPOSAL

To: CITY OF KISSIMMEE
C/O Steve Callahan

Date: April 26, 2021

Job site Location:

Kissimmee Lakefront Park, Phase IV, Neptune Median, 2 additional medians as described in map.
Kissimmee, FL

We hereby present a proposal for the following:

- Provide Landscaping and Grounds Maintenance services at the Lakefront Park, Phase IV, Neptune Median, and 2 additional medians as described in map in accordance with the scope of work currently provided.
- At a per cycle cost of \$3500.00
- We agree on all terms of the Maintenance Agreement.

All Material is guaranteed to be as specified. All work to be completed in a workman-like manner according to industry standard practices. Any alteration or deviation from the above specifications involving extra will be executed upon written orders and will become an extra charge over and above the estimate. Any verbal authorization given by the customer will be treated the same as written orders even if authorization is not written. Customer will be held responsible for all legal fees associated with this proposal and the collection of moneys due for work performed.

Start and end dates are pending all P.O.s and authorizations received in a timely manner.

Authorized Signature:

Authorized Signature: Charles Proffitt, Project Manager

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to proceed with the work specified.

Date of Acceptance _____

Signature _____

**COMPLETE PROFESSIONAL SERVICES IN GROUNDS
MAINTENANCE AND LANDSCAPING**



Lakefront Park Landscape and Mowing Contract

Lakefront Park from and including the Rain Gardens south of Toho Marina on Lakeview Drive to Monument Avenue, including all Peanut Grass on the west side of Lakeview Drive and the north side of Monument Avenue. Lakeshore Drive from the sidewalk on the west side to the Sea Wall, Brinson Park on both sides of Neptune Road from Lakeshore Drive east to the bridge, and the center medians on Neptune Road from Lakeshore Drive east to Lind Ave.

KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: BG/1
Botanical name: Bauhinia galpinii
Common name: Pride-of-the-Cape

Maintenance Description: Plants to form a mass. Prune to keep form of bed and 4-5 feet in height. May need to be mulched in the winter to prevent frost die-back.



Plan Callout: CAL/7
Botanical name: Crinum asiaticum
Common name: Crinum Lily

Maintenance Description: Plants to form a mass. No regular pruning necessary. Once the lily blooms, you can cut off the flower. Cut dying or yellowing bottom leaves as they age.



Plan Callout: CC/3
Botanical name: Curcuma cordata
Common name: Jewel of Thailand Ginger

Maintenance Description: Plants to form a mass. Low maintenance. May die back in winter but will come back stronger in spring. Prefers moist soil.



Plan Callout: CF/1
Botanical name: Canna flaccida
Common name: Yellow Canna

Maintenance Description: Plants to form a mass. No pruning necessary. Remove dead blooms and winter die back to provide for a neat appearance.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: CFH/1
Botanical name: *Cyrtomium falcatum*
Common name: Holly Fern

Maintenance Description: Plant to form a groundcover mass. Low maintenance, very little pruning or fertilization. Remove dead material as necessary. Prefers moist soil.



Plan Callout: CSA/3
Botanical name: *Camellia sasanqua*
Common name: Sasanqua Camellia

Maintenance Description: Plants to form a hedge, prune at 5-6 feet height. Prune immediately following flowering, to ensure you do not remove the next year's flower buds. No tip pruning.



Plan Callout: DT/1
Botanical name: *Dianella tasmanica*
Common name: Flax Lily

Maintenance Description: Plants to form a groundcover mass. Plant can be hard pruned to a few inches from the ground every 3-5 years or when plant is looking leggy and unhealthy. Prune in early spring. Deadheading spent flowers and removing browned stems will make room for healthy new growth.



Plan Callout: DT/1
Botanical name: *Dietes vegeta*
Common name: African Iris
Maintenance Description: Plants to form a mass. Plant does not need to be pruned. If bed is looking too crowded, thinning the plant may be required.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: EC/1
Botanical name: Eleocharis spp.
Common name: Spikerush **Maintenance**
Description: Plants to form a mass.
 Plant does not need to be pruned. If bed is looking too crowded, thinning the plant and removing dead material may be required.



Plan Callout: GG/3
Botanical name: Galphimia gracilis
Common name: Thryallis
Maintenance Description: Plants to form a mass.
 Prune at 3-4 feet height, trim side branches that encroach into sidewalk areas. Prune is in late winter/early spring before it begins putting on new growth.



Plan Callout: HP/3
Botanical name: Hamelia patens
Common name: Firebush
Maintenance Description: Plants to form a mass.
 Prune at 3-4 feet height, trim side branches that encroach into sidewalk areas. Prune is in late winter/early spring before it begins putting on new growth.



Plan Callout: HQ/3
Botanical name: Hydrangea quercifolia
Common name: Oakleaf Hydrangea
Maintenance Description: Plants to form a mass.
 Do minimal renewal pruning (removing one-third of the stems, the oldest, to the ground) only as needed.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: IA/3
Botanical name: Illicium anisatum
Common name: Star Anise

Maintenance Description: Plants to form a hedge.
 Clip hedge at height below Community House windows.
 Prune in the late winter or early spring.



Plan Callout: IG/3
Botanical name: Ilex glabra
Common name: Gallberry

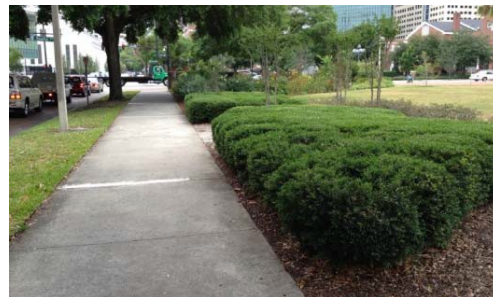
Maintenance Description: Allow plants to form a large mass. Clip hedge at 5-6 foot height.



Plan Callout: IVN/3
Botanical name: Ilex vomitoria 'Nana'

Common name: Dwarf Yaupon Holly

Maintenance Description: Plants to form a mass.
 Trim at 24" ht. Prune in the late winter or spring,
 depending on when the plants flower.



Plan Callout: IVB/1
Botanical name: Iris virginica
Common name: Blue Flag Iris

Maintenance Description: Plants to form a mass.
 Plant does not need to be pruned. Thinning the plants and
 removing dead material may be required.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: JE/1
Botanical Name: Juncus effusus
Common Name: Soft Rush

Maintenance Description: Plants to form a mass. Plant does not need to be pruned. If bed is looking too crowded, thinning the plant and removing dead material may be required.



Plan Callout: LMT/1
Botanical Name: Lantana montevidensis
Common Name: Trailing Lantana

Maintenance Description: Plants to form a groundcover mass. Prune periodically during summer by lightly shearing the tip growth to encourage repeat blooming. Prune back in spring to remove old growth and prevent woodiness.



Plan Callout: MCP/3
Botanical Name: Muhlenbergia capilaris
Common Name: Muhly Grass

Maintenance Description: Trim out the flower stalks and comb or rake out dead foliage. To clean up throughout the remainder of the season, use hands or a rake to comb through the grass clump and remove loose brown blades. Trim in late winter or early spring.



Plan Callout: MF/3
Botanical Name: Myrcianthes fragrans
Common Name: Simpson Stopper

Maintenance Description: Plants to form a mass. Prune as hedge, 3 feet wide and 8-10 feet in height.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: MFD/3
Botanical Name: Myrcianthes fragrans
 'Compacta'
Common Name: Dwarf Simpson Stopper

Maintenance Description: Plants to form a mass.
 Trim at 24-30" height. Trim in late winter or early spring.



Plan Callout: NB/1
Botanical Name: Nephrolepis exaltata
Common Name: Boston Fern

Maintenance Description: Plants to form a groundcover mass and fill the bed. Remove all dead or dried out parts from this plant.



Plan Callout: PCP/1
Botanical Name: Pontederia cordata
Common Name: Pickerel Weed

Maintenance Description: Plants to form a mass.
 No regular maintenance required.



Plan Callout: SB/3
Botanical Name: Spartina bakeri
Common Name: Cordgrass

Maintenance Description: No regular maintenance is required.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: SC
Botanical Name: Scirpus californicus
Common Name: Giant Bulrush
Maintenance Description: No regular maintenance is required.



Plan Callout: SN/10
Botanical Name: Strelitzia nicolai
Common Name: White Bird of Paradise

Maintenance Description: Plant needs some grooming and leaves need to be removed from time to time, as the large leaves can become ragged from winds. Groom the plant by removing dead leaves.



Plan Callout: SPC/1
Botanical Name: Spartina patens
Common Name: Saltmeadow cord grass

Maintenance Description: Plants to form a mass. No regular maintenance required.



Plan Callout: SPP
Botanical Name: Setcreasea pallida
Common Name: Purple Queen

Maintenance Description: Plants to form a groundcover mass. Trim as groundcover at edges of bed and adjacent to sidewalks.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: SRB/10
Botanical Name: *Strelitzia reginae*
Common Name: Bird of Paradise Flower

Maintenance Description: No regular maintenance required. Groom the plant by removing dead leaves, cut dead or dying stalks at base of plant near ground.



Plan Callout: SRC/7
Botanical Name: *Serenoa repens* 'Silver'
Common Name: Silver Saw Palmetto

Maintenance Description: No regular maintenance required. Trim back fronds at stems near ground that encroach into sidewalk areas.



Plan Callout: SRP/7
Botanical Name: *Serenoa repens*
Common Name: Saw Palmetto

Maintenance Description: No regular maintenance required. Trim back fronds at stems near ground that encroach into sidewalk areas.



Plan Callout: TA/1
Botanical Name: *Trachelospermum asiaticum*
Common Name: Dwarf Confederate Jasmine

Maintenance Description: Plants to form a groundcover mass. Trim as groundcover at edges of bed and adjacent to sidewalks.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: TAL/1
Botanical Name: Trachelospermum as. 'Longleaf'
Common Name: Texas Longleaf Asian Jasmine

Maintenance Description: Plants to form a groundcover mass. Trim as groundcover at edges of bed and adjacent to sidewalks.



Plan Callout: TDF/3
Botanical Name: Tripsacum dactyloides
Common Name: Fakahatchee Grass

Maintenance Description: Trim annually by cutting grass 6-8 inches above ground. Trim in early spring (Feb-March).



Plan Callout: TFG/3
Botanical Name: Tripsacum floridanum
Common Name: Florida Gamma Grass

Maintenance Description: Trim annually by cutting grass 6-8 inches above ground. Trim in early spring (Feb-March).



Plan Callout: TV/1
Botanical Name: Tulbaghia violacea
Common Name: Society Garlic

Maintenance Description: Spent flower stalks should be cut away after flowering. The same applies for dead leaves or leaves with brown tips.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: VAD/3
Botanical Name: *Vaccinium darrowii*
Common Name: Evergreen Blueberry

Maintenance Description: Plants to form a mass. Trim at base of branches that encroach onto sidewalk areas.



Plan Callout: VOW/3
Botanical Name: *Viburnum obovatum*
Common Name: Walter's Viburnum

Maintenance Description: Trim top of plants at 6-8 feet in height. Do not sheer as a hedge. Trim at base of branches that encroach onto sidewalk areas.



Plan Callout: VSB/1
Botanical Name: *Vriesea* spp.
Common Name: Bromeliad

Maintenance Description: Remove dead and dying leaves as necessary. If pests are present, cut off infected leaves.



Plan Callout: ZF/10
Botanical Name: *Zamia furfuracea*
Common Name: Cardboard Palm

Maintenance Description: No regular maintenance required. Trim at base of branches that encroach onto sidewalk areas.



KISSIMMEE LAKEFRONT PARK - PLANT MAINTENANCE

ATTACHMENT B

Plan Callout: ZP/3
Botanical Name: *Zamia pumila*
Common Name: Coontie

Maintenance Description: Plants to form a mass. No regular maintenance required. Trim at base of branches that encroach onto sidewalk areas.



WILDFLOWER MIX

Plan Callout: MIX1
1. Botanical Name: *Eragrostis elliottii*
Common Name: Elliott's Lovegrass
2. Botanical Name: *Gaillardia pulchella*
Common Name: Blanket Flower
3. Botanical Name: *Liatris spicata*
Common Name: Blazing Star

Maintenance Description: Annual deadheading of wildflowers in the winter.



1.



2.



3.

Plan Callout: MIX2
1. Botanical Name: *Eragrostis spectabilis*
Common Name: Purple Lovegrass
2. Botanical Name: *Lobelia cardinalis*
Common Name: Cardinal flower
3. Botanical Name: *Silphium compositum*
Common Name: Rosinweed

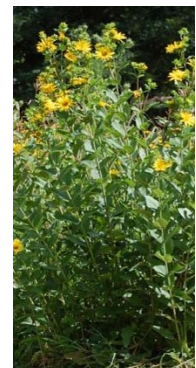
Maintenance Description: Annual deadheading of wildflowers in the winter.



1.



2.



3.

End of Plant Maintenance

ITEM 7.D**ACCEPTANCE OF A FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM GRANT AGREEMENT TO UPDATE THE AIRPORT MASTER PLAN****Request**

Approval to accept a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to update the Airport Master Plan for Kissimmee Gateway Airport.

Explanation

To be eligible to accept FAA funding, the Kissimmee Gateway Airport is required to maintain a current Airport Master Plan (AMP). This project will update the AMP that was developed in 2004. The AMP is a comprehensive study focusing on the short-, medium- and long-term development plans to meet future aviation development. The study will include important areas such as land-use development, forecasting, future aircraft mix, sustainability and energy use, and best practices for Kissimmee Gateway Airport (ISM) to support the regional aviation industry. The work will be performed by AVCON, Inc. and is funded 100% by the FAA.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
47070106-506393	TBD	Increase	\$466,204	
47000331-331410	N/A	Increase	\$466,204	

Financial Summary:

This project is funded by the Federal Aviation Administration at 100% as part of the American Rescue Plan Act funding.

FAA Grant: 3-12-0038-040-2021 - \$466,204

Kissimmee Gateway Airport - \$0

Recommendation

Staff recommends City Commission approval to accept an FAA AIP grant to update the Airport Master Plan for Kissimmee Gateway Airport and to amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

City of Kissimmee

Approve

Department: Airport

Presenter:

Attachment(s):

1. FAA AIP Grant 3-12-0038-040-2021

3-12-0038-040-2021



U.S. Department
of Transportation
Federal Aviation
Administration

8427 SouthPark Circle
Suite 524
Orlando, FL 32819

May 20, 2021

Mr. Shaun J. Germolus, A.A.E.
Director of Aviation
City of Kissimmee
401 Dyer Blvd.
Kissimmee, Florida 34741

Dear Mr. Germolus:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program (AIP) Project No. 3-12-0038-040-2021 at Kissimmee Gateway Airport in Kissimmee, Florida. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant by providing their electronic signature.
- c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their electronic signature.
- d. You may not make any modification to the text, terms or conditions of the grant offer.
- e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.

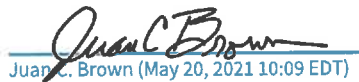
2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

William Farris, (407) 487-7232, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,



Juan C. Brown (May 20, 2021 10:09 EDT)

Juan C. Brown
Acting Manager

3-12-0038-040-2021



U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	May 20, 2021
Airport/Planning Area	Kissimmee Gateway Airport
FY2021 AIP Grant Number	3-12-0038-040-2021
Unique Entity Identifier	802964759
TO:	City of Kissimmee
	(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated April 30, 2021, for a grant of Federal funds for a project at or associated with the Kissimmee Gateway Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Kissimmee Gateway Airport (herein called the "Project") consisting of the following:

Update Airport Master Plan

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$466,204.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 466,204 for planning

\$ 0 airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:

- a. Period of Performance:

1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).

- b. Budget Period:

1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in Paragraph a.1. Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

- c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

3-12-0038-040-2021

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, and the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"). Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project, and request prior approval from FAA. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before June 19, 2021, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
 - a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects if funds are available;
 - c. May be increased by not more than the greater of the following for a, land project, if funds are available:

1. 15 percent; or
2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

18. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debars a contractor, person, or entity.

20. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

21. Trafficking in Persons.

- a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
- b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph a. of this condition through conduct that is either –
 - a. Associated with performance under this Grant; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition.
- d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.

22. AIP Funded Work Included in a PFC Application. Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.

23. Exhibit "A" Property Map. The Exhibit "A" Property Map dated March 22, 2005, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.

24. Employee Protection from Reprisal.

3-12-0038-040-2021

a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a.2. below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;
 - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this condition more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

SPECIAL CONDITIONS

25. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

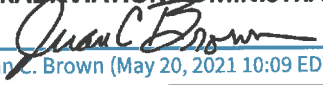
3-12-0038-040-2021

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


Juan C. Brown (May 20, 2021 10:09 EDT)

(Signature)

Juan C. Brown

(Typed Name)

Acting Manager

(Title of FAA Official)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

3-12-0038-040-2021

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated _____

City of Kissimmee

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By: _____

(Typed Name of Sponsor's Authorized Official)

Title: _____

(Title of Sponsor's Authorized Official)

² Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Florida. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State, the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49 U.S.C., Chapters 471 and 475; 49 U.S.C. §§ 40101, et seq., and 48103; and the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2). In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at _____

By: _____

(Signature of Sponsor's Attorney)

ASSURANCES

PLANNING AGENCY SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act – 5 U.S.C. 1501, et seq.²
- d. Rehabilitation Act of 1973 – 29 U.S.C. 794
- e. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin)
- f. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability
- g. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- h. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- i. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

EXECUTIVE ORDERS

- a. Executive Order 12372 - Intergovernmental Review of Federal Programs

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures
- e. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- g. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- h. 49 CFR Part 20 – New restrictions on lobbying.
- i. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- j. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- k. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- l. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- m. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- n. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- q. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252).

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

¹ These laws do not apply to airport planning sponsors.

- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

1. Responsibility and Authority of the Sponsor.

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

3. Preserving Rights and Powers

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary

4. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.

5. Accounting System, Audit, and Record Keeping Requirements

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The

accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Planning Projects

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

7. Reports and Inspections.

It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

8. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

3-12-0038-040-2021

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

- b. Applicability

- 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
- 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2. So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language.

It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The City of Kissimmee, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

- e. Required Contract Provisions.

- 1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

- 3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

9. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

10. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

11. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.

12. Disadvantaged Business Enterprises.

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in

3-12-0038-040-2021

appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. § 3801).

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current versions of FAA's Advisory Circulars (A/Cs) here:

https://www.faa.gov/regulations_policies/advisory_circulars/

Airports A/Cs are found in the 150 series. In addition Airspace A/Cs, found in the 70 series, also may apply for certain projects.

ITEM 7.E**ACCEPTANCE BY RESOLUTION OF A FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION GRANT AGREEMENT FOR AN AUXILIARY WEATHER STATION
TO SUPPORT THE AIR TRAFFIC CONTROL TOWER****Request**

Acceptance of a Florida Department of Transportation (FDOT) Public Transportation Grant Agreement for an auxiliary weather station to support the air traffic control tower at Kissimmee Gateway Airport.

Explanation

The Federal Aviation Authority (FAA) requires the federal contract tower at the Kissimmee Gateway Airport to provide air traffic services that include up to date weather information for the pilots. As part of the requirements, a secondary weather system is to be installed on the Airport to provide backup data in the event of a failure of the primary system.

FDOT is offering an 80% Public Transportation Grant Agreement (PTGA) for this project. The Airport's responsibility is 20%. AVCON Inc, has obtained an FAA approved site selection and will design, bid and oversee the construction of the system.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
47000334-334410	N/A	Increase	\$300,000	
47070106-506393	AP2102	Increase	\$300,000	

Financial Summary:

Portions of this project are funded by the Florida Department of Transportation (80%) and the Kissimmee Gateway Airport (20%). The total project amount is \$375,000 with each agency funding the following amounts:

FDOT-PTGA : (FM No.449265-1-94-01) - \$300,000
Kissimmee Gateway Airport - \$75,000

The City/Airport share for this project is \$75,000; \$32,000 is available in project AP2102. The balance needed for the City match as well as an additional amount will be provided by Airport reserves in the amount of \$60,000 based upon a subsequent agenda item requesting a transfer from

City of Kissimmee

reserves.

Recommendation

Staff recommends City Commission approval to accept, BY Resolution, a PTGA from FDOT for an auxiliary weather station to support the air traffic control tower at Kissimmee Gateway Airport and to amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

Accept

Department: Airport

Presenter:

Attachment(s):

1. Resolution PTGA for Auxiliary Weather Station Project-
2. PTGA Agreement - FM 449265-1 - Secondary Weather Station

RESOLUTION NO. _____

WHEREAS, the City of Kissimmee has determined to make certain improvements at the Kissimmee Airport, the purpose of this Public Transportation Grant Agreement (PTGA) is to provide funds for the of an Auxiliary Weather Station Project.

WHEREAS, the State of Florida Department of Transportation has agreed to participate in the funding of this program, and

WHEREAS, it is necessary, for the City of Kissimmee to enter into a Public Transportation Grant Agreement with the State of Florida Department of Transportation for construction funding of this project.

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Kissimmee, Florida in lawful session assembled, that the Mayor and City Clerk of the City of Kissimmee are hereby authorized to execute this Public Transportation Grant Agreement as to Project No.:449265-1-94-01, Function 215.

PASSED AND DULY ADOPTED on this _____ Day of June 2021.

CITY OF KISSIMMEE, FLORIDA

Mayor-Commissioner

ATTEST

City Clerk

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

Financial Project Number(s): (item-segment-phase-sequence) 449265-1-94-01	Fund(s): Work Activity Code/Function: Federal Number/Federal Award Identification Number (FAIN) – Transit only:	DPTO 215 N/A N/A 80-269-4759	FLAIR Category: 088719 Object Code: 751000 Org. Code: 55052000531 Vendor Number: VF596000348026
Contract Number:	Federal Award Date:		
CFDA Number: N/A	Agency DUNS Number:		
CFDA Title: N/A			
CSFA Number: 55.004			
CSFA Title: Aviation Grant Program			

THIS PUBLIC TRANSPORTATION GRANT AGREEMENT ("Agreement") is entered into _____, by and between the State of Florida, Department of Transportation, ("Department"), and City of Kissimmee, ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. Authority.** The Agency, by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D", Agency Resolution** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section(s) 332.007, Florida Statutes, to enter into this Agreement.
- 2. Purpose of Agreement.** The purpose of this Agreement is to provide for the Department's participation in Design, Bid, and Construct Automated Weather Observation System (AWOS) at Kissimmee Gateway Airport, as further described in **Exhibit "A", Project Description and Responsibilities**, attached and incorporated into this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
- 3. Program Area.** For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- ☒ **Aviation**
- ☐ **Seaports**
- ☐ **Transit**
- ☐ **Intermodal**
- ☐ **Rail Crossing Closure**
- ☐ **Match to Direct Federal Funding (Aviation or Transit)**
- (Note: Section 15 and Exhibit G do not apply to federally matched funding)
- ☐ **Other**

- 4. Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

- ☒ Exhibit A: Project Description and Responsibilities
- ☒ Exhibit B: Schedule of Financial Assistance
- ☐ *Exhibit B1: Deferred Reimbursement Financial Provisions
- ☐ *Exhibit B2: Advance Payment Financial Provisions
- ☒ *Exhibit C: Terms and Conditions of Construction
- ☒ Exhibit D: Agency Resolution
- ☒ Exhibit E: Program Specific Terms and Conditions
- ☒ Exhibit F: Contract Payment Requirements
- ☒ *Exhibit G: Audit Requirements for Awards of State Financial Assistance

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- ___ *Exhibit H: Audit Requirements for Awards of Federal Financial Assistance
___ *Additional Exhibit(s):

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

5. Time. Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 1, 2024. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. ___ If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the ___ day of ___, or within ___ days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. Notwithstanding any other provision of this Agreement, if the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.

d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

PUBLIC TRANSPORTATION
GRANT AGREEMENT**9. Project Cost:**

- a. The estimated total cost of the Project is \$375,000. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$300,000 and, the Department's participation in the Project shall not exceed 80.00% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

☒ Travel expenses are NOT eligible for reimbursement under this Agreement.

☐ Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**Form 725-000-01
STRATEGIC
DEVELOPMENT
OGC 04/21

f. Financial Consequences. Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

g. Invoice Processing. An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

h. Records Retention. The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

i. Progress Reports. Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

j. Submission of Other Documents. The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- k. Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- l. Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:
- "The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
- o. Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

in writing by the Department. Specific unallowable costs may be listed in **Exhibit "A", Project Description and Responsibilities**.

11. General Requirements. The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. Necessary Permits Certification.** The Agency shall certify to the Department that the Agency's design consultant and/or construction contractor has secured the necessary permits.
- b. Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
- c. Notification Requirements When Performing Construction on Department's Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department's right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i.** Require the construction work of the Project that is on the Department's right-of-way to be performed by a Department prequalified contractor, or
 - ii.** Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
- d.** ☐ If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
- e.** ☐ If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i.** ☐ Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii.** ☐ Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii.** ☐ Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
- f. Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
- g. Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

- a. Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

- 13. Maintenance Obligations.** In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions “a” and “b” above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

- 15. Single Audit.** The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
- i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “H”, Audit Requirements for Awards of Federal Financial Assistance**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Audit Requirements for Awards of State Financial Assistance**, to this Agreement indicates state financial

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
 - viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
 - c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. **Convicted Vendor List.** 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 on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendor List.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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.
- c. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- h. **Executive Order 20-44.** Pursuant to Governor's Executive Order 20-44, if the Agency is required by the Internal Revenue Code to file IRS Form 990 and is named in statute with which the Department must form a sole-source, public-private agreement; or through contract or other agreement with the State, annually receives 50% or more of its budget from the State or from a combination of State and Federal funds, Recipient shall submit an Annual Report to the Department, including the most recent IRS Form 990, detailing the total compensation for each member of the Agency executive leadership team. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Agency shall inform the Department of any changes in total executive compensation during the period between the filing of Annual Reports within 60 days of any change taking effect. All compensation reports shall detail the percentage of executive leadership compensation received directly from all State and/or Federal allocations to the Agency. Annual Reports shall be in the form approved by the Department and shall be submitted to the Department at fdotsingleaudit@dot.state.fl.us within 180 days following the end of each tax year of the Agency receiving Department funding.
- i. **Design Services and Construction Engineering and Inspection Services.** If the Project is wholly or partially funded by the Department and administered by a local governmental entity, except for a seaport listed in Section 311.09, Florida Statutes, the entity performing design and construction engineering and inspection services may not be the same entity.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

subcontractor, in connection with this Agreement. Additionally, the Agency shall indemnify and hold harmless the State of Florida, Department of Transportation, including the Department's officers 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 intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including the Department's officers 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 intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement."

- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies,

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.
- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**STRATEGIC
DEVELOPMENT
OGC 04/21

- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).
- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY City of Kissimmee

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: Loreen Bobo, P.E.

Title: _____

Title: Director of Transportation DevelopmentSTATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:Daniel L. McDermott

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****EXHIBIT A****Project Description and Responsibilities**

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): Design, Bidding, Acquisition, Installation and Training of FAA required Automated Weather Observation System (AWOS). This is required to report certified data: wind speed and direction, wind gust, variable wind direction, temperature, dewpoint, altimeter setting, density altitude, and visibility.

B. Project Location (limits, city, county, map): Kissimmee Gateway Airport/Kissimmee, FL/Osceola

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): As required by 215.971, F.S., this scope of work includes but is not limited to consultant and design fees, survey and geotechnical costs, permitting, bid and award, construction inspection and material testing costs, mobilization and demobilization, purchase, delivery, installation, testing, commissioning of the equipment, coordination with all necessary agencies; and site preparation (earthwork and electrical work). It includes all materials, equipment, labor, and incidentals to complete a Weather Reporting Equipment installation project. The Sponsor will comply with Aviation Program Assurances.

The specifics of the Project Scope for the design will include a site study for the new system to be reviewed and approved by the FAA. System design and specifications will be prepared for the auxiliary weather sensor components required by FAA to supplement the existing on-airport equipment to maintain Air Traffic Control Tower (ATCT) operations.

The specifics of the Project Scope for construction will be described in and limited by all Design and Bid documents provided by the Sponsors Engineer. Together with all plan updates, necessary design variations, expectations, and change orders approved by the sponsor.

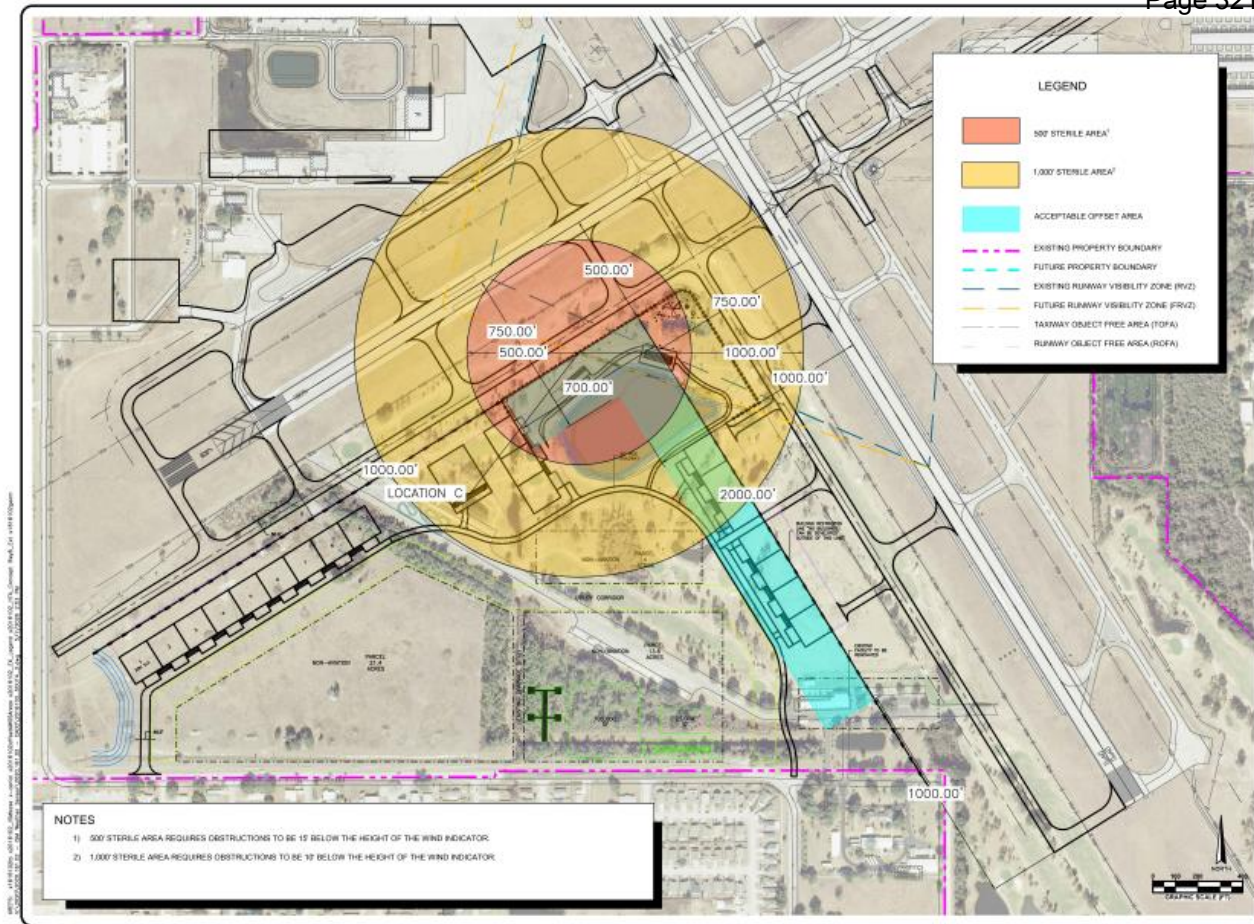
D. Deliverable(s): Final close out documents to be uploaded into Jacip.

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to): Stored material

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants. Operating grants may be issued for a term not to exceed three years from execution. The original grant agreement will include funding for year one. Funding for years two and three will be added by amendment as long as the grantee has submitted all invoices on schedule and the project deliverables for the year have been met.



AUXILIARY WEATHER STATION

KISSIMMEE GATEWAY AIRPORT
KISSIMMEE, FLORIDA

SOUTH 2 ALTERNATIVE RECOMMENDED

SCALE (FT): GRAPHIC

REVISIONS		
NO.	DATE	BY DESCRIPTION

DESIGNED BY: SES
 DRAWN BY: DWN
 CHECKED BY: CKD
 APPROVED BY: GS
 DATE: MAY, 2020

FDOT FM NO. -
 FAA AIP NO. -
 AVCON PROJECT NO. 2020.181.02
 CADD 2318102_SOUTH_2

DRAWING EXHIBIT 3

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

EXHIBIT B**Schedule of Financial Assistance**

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
449265-1-94-01	DPTO	088719	2021	751000	55.004	Aviation Grant Program	\$300,000
449265-1-94-01	LF	088719	2021	751000	55.004	Aviation Grant Program	\$75,000
Total Financial Assistance							\$375,000

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Planning	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Environmental/Design/Construction	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Capital Equipment/ Preventative Maintenance	\$300,000	\$75,000	\$0	\$375,000	80.00	20.00	0.00
Match to Direct Federal Funding	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Mobility Management (Transit Only)	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Totals	\$300,000	\$75,000	\$0	\$375,000			

*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement.

BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category (grant phase) has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Joseph A. Jerkins

Department Grant Manager Name

Signature

Date

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****EXHIBIT C****TERMS AND CONDITIONS OF CONSTRUCTION****1. Design and Construction Standards and Required Approvals.**

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Joseph A. Jerkins (email: joseph.jerkins@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department's Right of Way. If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is ____.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

- i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense,

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t. Restricted hours of operation will be as follows, unless otherwise approved by the Department's District Construction Engineer or designee (insert hours and days of the week for restricted operation): N/A
- u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contact info:

800-780-7102

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

3. **Engineer's Certification of Compliance.** The Agency shall complete and submit and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****ENGINEER'S CERTIFICATION OF COMPLIANCE**

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans for construction on the Department's Right of Way certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Page 328 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

EXHIBIT E

**PROGRAM SPECIFIC TERMS AND CONDITIONS - AVIATION
AVIATION PROGRAM ASSURANCES**

A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.
2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of **Exhibit “A”, Project Description and Responsibilities**, and **Exhibit “B”, Schedule of Financial Assistance**, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.
8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department’s continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.
10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency’s eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. **General Certification.** The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):
 - a. **Florida Statutes (F.S.)**
 - Chapter 163, F.S., Intergovernmental Programs
 - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
 - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
 - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
 - Chapter 332, F.S., Airports and Other Air Navigation Facilities
 - Chapter 333, F.S., Airport Zoning

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

b. Florida Administrative Code (FAC)

- Chapter 73C-41, FAC, Community Planning; Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300, FAC, Open Burning, Prohibitions
- Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

- Eight Steps of Building a New Airport
- Florida Airport Revenue Use Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Airport Compatible Land Use Guidebook

- 2. Construction Certification.** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

a. Federal Requirements

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design
- FAA AC 150/5370-2, Operational Safety on Airports During Construction
- FAA AC 150/5370-10, Standards for Specifying Construction of Airports

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, FAC, Airfield Standards for Licensed Airports
- Standard Specifications for Construction of General Aviation Airports
- Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

- 3. Land Acquisition Certification.** The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

a. Federal Requirements

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. Florida Requirements

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

C. Agency Authority.

- 1. Legal Authority.** The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.
- 2. Financial Authority.** The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
- c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

3. Preserving Rights and Powers.

- a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. Hazard Removal and Mitigation.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- a. For airport hazards located on airport controlled property, the Agency shall clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.
- b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.
- c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

6. Consistency with Local Government Plans.

- a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.
- b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.
- c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

- a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.
- b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:
 - 1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
 - 2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
 - 3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.
- d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.

8. Airport Financial Plan.

- a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency's Airport financial plan must comply with the following conditions:
 - 1) The Airport financial plan will be a part of the Airport Master Plan.
 - 2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.
 - 3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.
- b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

- 9. Airport Revenue.** The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.

11. Public-Private Partnership for Aeronautical Uses.

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.

12. Economic Nondiscrimination.

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
 - 1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- 2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

14. Operations and Maintenance.

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.
 - 1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
 - 2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
 - 3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.
- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.

16. Project Implementation.

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

18. Airfield Access.

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS

Page 335 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

20. Consultant, Contractor, Scope, and Costs.

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such project materials available for public review, unless exempt from public disclosure.
 - 1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.
 - 2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.
- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
 - 1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
 - 2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
 - 3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

- a. **Laws.** Acquire the land in accordance with federal and/or state laws governing such action.
- b. **Administration.** Maintain direct control of Project administration, including:
 - 1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
 - 2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
 - 3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
 - 4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
 - 5) Establish a Project account for the purchase of the land.
 - 6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds.** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:
 - 1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - 2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
 - 3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
 - 4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.
- d. **New Airport.** If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:
 - 1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
 - 2) Complete an Airport Master Plan within two years of land purchase.
 - 3) Complete airport construction for basic operation within 10 years of land purchase.
- e. **Use of Land.** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.
- f. **Disposal of Land.** For the disposal of real property the Agency assures that it will comply with the following:
 - 1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- 2) Land will be considered to be needed for airport purposes under this assurance if:
 - a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
 - b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- 3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- 4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:**a. Project Certifications.** Certify Project compliances, including:

- 1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- 2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- 3) Completed construction complies with all applicable local building codes.
- 4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

- 1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
- 2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
- 3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
- 4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

c. Inspection and Approval. The Agency assures that:

- 1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
- 2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
- 3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Page 338 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

24. Noise Mitigation Projects. The Agency assures that it will:

- a. Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.
 - 1)** The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
 - 2)** The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.
- b. Private Agreements.** For noise compatibility projects on privately owned property:
 - 1)** The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
 - 2)** The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

- End of Exhibit E -

EXHIBIT F

**Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts**

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address <https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Page 340 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

EXHIBIT G

AUDIT REQUIREMENTS FOR AWARDS OF STATE FINANCIAL ASSISTANCE

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:~

Awarding Agency: Florida Department of Transportation

State Project Title: Aviation Grant Program

CSFA Number: 55.004

***Award Amount:** \$300,000

*The award amount may change with amendments

Specific project information for CSFA Number 55.004 is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at:
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

ITEM 7.F**TRANSFER FROM AIRPORT RESERVES FOR AUXILIARY WEATHER STATION TO SUPPORT THE AIR TRAFFIC CONTROL TOWER****Request**

Approval to transfer funds from Airport reserves to complete financial requirements for auxiliary weather station to support the air traffic control tower.

Explanation

The Federal Aviation Authority (FAA) requires the Federal Contract Tower at the Kissimmee Gateway Airport to provide air traffic services, to include up to date weather information for the pilots. As part of the requirements, a secondary weather system is to be installed on the Airport to provide backup data in the event of a failure of the primary system. The Florida Department of Transportation (FDOT) is offering an 80% Public Transportation Grant Agreement (PTGA) for this project. The Airport's responsibility is 20% which is \$75,000. \$32,000 is budgeted in the project account; therefore, \$43,000 from reserves is needed to complete the financial requirements for this project.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
46170100-509276	AP2102	Decrease	\$43,000	
47070106-506393		Increase	\$43,000	

Financial Summary:

Adequate funds are available in the Airport reserves to fund the increased City match.

Recommendation

Staff recommends Commission approval to transfer funds from Airport reserves to the weather station project for a total of \$43,000 and to amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

City of Kissimmee

Presenter:

Attachment(s):

1. Avcon Agreement Amendment No 10 for Secondary Weather Station (R)
2. PTGA Agreement - FM 449265-1 - Secondary Weather Station



AVCON, INC.
ENGINEERS & PLANNERS
5555 E. Michigan St., Suite 200
Orlando, Florida 32822
Phone: (407) 599-1122
Fax: (407) 599-1133
www.avconinc.com

**AMENDMENT NO. 10
TO THE
PROFESSIONAL SERVICES AGREEMENT**

BETWEEN

**CITY OF KISSIMMEE
KISSIMMEE, FLORIDA
(SPONSOR)**

AND

**AVCON, INC.
ORLANDO, FLORIDA
(CONSULTANT)**

This is a AMENDMENT entered into, effective this _____ day of _____ 20____, by and between the parties above described, WHEREAS, the SPONSOR and CONSULTANT have entered into a Master Consulting Agreement (Professional Services Agreement) dated December 19, 2017, hereinafter referred to as the MASTER AGREEMENT for the purpose of defining the general terms and conditions applicable to the initial and continuing contractual relationship between the parties hereto. Except for what is in this SUPPLEMENTAL AGREEMENT, all covenants, conditions, and obligations of the MASTER AGREEMENT not in conflict herewith shall remain in full force and effect.

NOW THEREFORE, in consideration of these premises and of the satisfactory performance by the CONSULTANT of the services hereinafter provided and for the payments to be made, therefore by the SPONSOR, the CONSULTANT and the SPONSOR do hereby agree to accomplish the work as follows:

SCOPE OF SERVICES:

Provide technical design and construction administration engineering services in connection with Attachment A as follows:

SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD

This project has a construction budget of between approximately \$300,000 and \$400,000 including construction engineering and inspection.

All Man-hours and Expenses are included in Lump Sum Costs as Attached. Reference is made to the Master Agreement for Professional Consulting Services and Fee Structure between Consultant and Client therein or as attached to this Supplemental Agreement.

The **LUMP SUM COST** of this AMENDMENT is **One Hundred Sixteen Thousand Four Hundred Ninety Two and 50/100 dollars (\$116,492.50)**, as detailed in Attachment A. The Client agrees to pay **AVCON** for its services based on approved monthly invoices.

The client project representative and **AVCON** shall jointly determine interim production and review milestones.

This AMENDMENT and all referenced attachments shall constitute the complete AMENDMENT for this assignment.

Sponsor Concurrence:

Consultant Concurrence:

CITY OF KISSIMMEE

AVCON, INC.

By: _____
Honorable Olga Gonzalez

Mayor - Commissioner

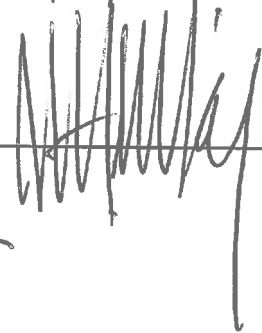
By: 
Authorized Signature
Sandeep Singh, P.E.
President

Date: _____

Date: 05/20/21

ATTEST:

ATTEST.



ATTACHMENT A

SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD PERFORMANCE PACKAGE ENGINEERING (NON-FEDERAL)

The following parties are referred to hereafter: SPONSOR (SPONSOR - City of Kissimmee); CONSULTANT (SPONSOR's Consultant – AVCON, Inc.); FAA (Federal Aviation Administration); FDOT (Florida Department of Transportation); DISTRICT (South Florida Water Management District); FDEP (Florida Department of Environmental Protection);

Consulting Services for the PROJECT include design engineering phase services as follows: design to provide a performance design package including plans, contract documents, performance specifications, and bidding.

I. PROJECT DESCRIPTION

The work can generally be as described below, hereinafter called the PROJECT.

Due to the complex and highly specialized nature of the proposed equipment and foundations necessary for the proposed work, this scope will cover a design/build performance criteria package. Therefore, the work will consist of the level of effort required for the design/build performance criteria package, bidding, construction admin, record drawings, and part-time inspection for:

SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD (NON-FEDERAL)

- Locate the AUXILIARY WEATHER SENSOR on the Airport, and update to the Airport Layout Plan accordingly.
- Formulate performance specifications for AUXILIARY WEATHER SENSOR components, that are required by FAA to supplement the existing on-airport equipment to maintain ATCT operation. The sensor is required to report certified data of: wind speed and direction, wind gust, variable wind direction, temperature, dewpoint, altimeter setting, density altitude, visibility (AWOS I), to be verified.
- Prepare performance plans, details, contract documents, and specifications package project manual for bidding to contractors/interested parties.
- Submit the FAA 7460-1 and Site Location plans for permission from FAA to build the AUXILIARY WEATHER SENSOR as a permanent installation on the Airport.
- Bid the project to obtain competitive bid pricing for construction

The contractor design/builders will be required to obtain necessary FCC commissioning frequency permitting / licensing, and all other permits, licenses, and fees.

Siting and approval by FAA will be part of the design coordination effort.

II. PROJECT SERVICES

The PROJECT Services are divided into the FAA categorized Basic Services and Special Services per Advisory Circular 150/5100-14. **Basic Services** are identified in Section III, and consist of the following phases:

- **Basic Services**

- A. Design

- B. Bidding
- C. Construction Admin

- **Special Services** are identified in Section IV and are sub-divided into following phases:

- A. Control & Testing of Construction Materials
- B. Part-Time Inspection + Expenses
- C. Record Drawings

Additional Services are identified in Section V, and include services not specifically performed in this SUPPLEMENTAL AGREEMENT, due to circumstances that may arise and which are beyond the control of the CONSULTANT, or due to not being applicable to the PROJECT.

III. BASIC SERVICES

The services to be rendered by the CONSULTANT included under this Article are defined as Basic Services in accordance with FAA AC 150/5100-14.

- A. Design.** Services to be rendered by the CONSULTANT during this phase include:
 1. Coordinate and provide for initial topographic survey and one geotechnical boring for the proposed Auxiliary Weather Sensor foundation.
 2. Prepare for, attend, and conduct one Kick-off / Pre-Design (30%) meeting in conjunction with City staff, Airport Tenants, FAA, FDOT, and others to review the conceptual design, to ensure direction and intent of the PROJECT and to answer questions from interested parties. Prepare and select the site for the new AUXILIARY WEATHER SENSOR and coordinate with FAA Non-Federal Program Implementation Manager (PIM).
 3. Identify any modifications to FAA/FDOT design standards and/or FAA/FDOT standard specifications and prepare a memorandum to the SPONSOR explaining advantages and alternates. CONSULTANT will coordinate SPONSOR approved deviations with the FAA/FDOT through approval, as necessary.
 4. Conduct at least one on-site field investigation, making notes, and taking photographs as necessary to clarify design parameters. Conduct interviews with applicable emergency services, utility, and Airport personnel.
 5. Prepare General and Special Provisions, Contract Forms, Technical Specifications. Use FAA/FDOT Standard Specifications, latest edition at the time of execution of this Professional Services Agreement. CONSULTANT may make modification(s) to these standards provided the changes are approved by SPONSOR, FAA, and FDOT. SPONSOR will be responsible for approving these prior to the coordination of the 100% certification letter submitted to the FDOT, and submission of plans and specifications to the FAA for approval (one for each design stage) as applicable.
 6. Prepare a complete set of construction drawings, in AutoCAD 2018 Civil 3D or later, detailing all of the proposed PROJECT construction (one set for each design stage). The plans will depict the primary project elements described above as separate schedules.
 7. Prepare Engineer's Report for the PROJECT, including an opinion of probable construction costs.

8. Prepare the 7460-1 documentation and file with the FAA.
9. At the 90% design development stages, submit the contract documents, drawings, technical specifications, and Engineer's report to the SPONSOR for review.
10. Prepare for, attend, one 90% Design Review conference, as necessary, in conjunction with SPONSOR and others to present design development and answer questions from interested parties.
11. Submit 100% certification letter to FDOT and Coordinate the Filing of FAA Airspace Checklist, Construction Safety and Phasing Plans, and remaining plans and specifications. A CSPP document will not be required since the project is not FAA funded.

B. Bidding.

1. Assistance with the actual advertising for bids, including assistance with advertisements for newspapers and construction trade publications. The actual cost of advertisement is included (bid invitation advertisement fee).
2. Assist SPONSOR in issuance of bid documents. Prepare, order, and assimilate bid sets including the construction plans and project manual to registered plans holders. Coordinate with plans rooms, SPONSOR, and others to arrange for delivery of bid sets, receive orders for bid sets, as well as manage and administer of bid sets in-house and to registered plans holders. Maintain a listing of registered plans holders, and dissemination to concerned parties.
3. Attend and assist the SPONSOR at one bid opening and advise as to matters relating to design as they may arise during the bidding period.
4. Prepare addenda as required and/or proposals, formulate responses to bidder questions, modify the plans and specifications as necessary, and general coordination and interpretation of the technical aspects of the bid documents.
5. Advise and make recommendations to SPONSOR during bidding, review the bids received as to the low responsive bidder quality, insurances, and references, and make determinations as to the efficacy of the bids. Prepare a recommendation to award letter, including a comprehensive bid tabulation with engineer's estimate. Coordinate with low responsive qualified bidder.

C. Construction Administration Phase services to be rendered by the CONSULTANT include:

1. Conduct one Pre-construction conference. The CONSULTANT will coordinate the time, date, and location of the preconstruction conference. The consultant will notify the Owner, the FAA, the FDOT, and other interested parties of the preconstruction conference and will invite their representatives to attend. The CONSULTANT will conduct the preconstruction conference in accordance with FAA AC 150/5300-9 *Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects* to ensure that the attendees are aware of the design, construction, and safety requirements of the project and are informed of their individual responsibilities.

3. **General Administration - Consultation and advice to the SPONSOR during construction.** The consultant will provide general consultation and advice to the Owner during the construction phase of the project. The consultant will provide general coordination between the Owner, FDOT, and the FAA during the construction phase of the project. The consultant will assist the Owner with the preparation and issuance of change orders, recommend construction specification interpretations, and advise the Owner as to the contractor's performance. The consultant will review daily progress reports, monthly construction progress reports, wage survey records, and certified payrolls. The consultant will distribute copies of the monthly construction progress reports to the Owner, the FAA, and the FDOT. The consultant will provide general supervision and support to the RPR including, but not limited to, coordinating field survey personnel, processing the RPR's weekly time sheets and expense sheets, providing technical documentation, providing field office supplies and materials, performing construction contract interpretation, analyzing unusual or unique developments or complications during construction, and communicating and corresponding with the contractor regarding contract administration, project changes, bonding and insurance issues, and other construction related matters. The consultant will communicate and coordinate with the contractor, Owner, FAA, FDOT, and RPR on a regular basis throughout the construction phase of the project in the form of teleconferences, letters, memos, faxes, and email.
4. **Preparation of field sketches required to resolve actual field conditions encountered.**
5. **Reviewing detailed construction, shop, materials certifications, and erection drawings submitted by contractor for compliance with design concepts.** The consultant will review the shop drawings and materials submittals that are furnished by the contractor as required by the construction contract documents. The consultant will either fully approve, conditionally approve, or reject the shop drawings and materials. The consultant will return conditionally approved and rejected shop drawings and materials submittals to the contractor for changes or revisions prior to the use of the materials on the project. The consultant will review up to three (3) resubmissions of a conditionally approved or rejected shop drawing or submittal. The consultant will prepare and maintain a submittal register identifying the submittal number, description, specification section, specification paragraph, received date, action date, and action taken. The consultant will distribute copies of the submittals and the updated submittal register to the Owner and the contractor.
6. **Reviewing and analyzing laboratory and field soils test reports, and delivery certificates for materials and equipment, as necessary and required by the PROJECT scope.**
7. **Observation of initial operation performance tests and test strips required by specifications.**
8. **Review and approval of periodic estimates submitted by the Resident Project Representative for partial and final payments to the contractor.**
9. **Final review of contractor monthly pay applications, including any adjustments necessary, and preparation of the recommendation to pay (as appropriate) letter, with one or more copies of the certified approved version of the application.**
10. **Preparation and negotiation of change orders and supplemental agreements, Requests for Information (RFI), Engineer's Supplemental Instructions (ESI), or review and approval of field directive change orders.**
11. **Supervisory Site Visits - The consultant will make periodic supervisory visits to the**

construction site to observe the progress, safety, and quality of the construction. The consultant will coordinate the site visits with the Owner and representatives of the contractor. The consultant's representatives will meet with the representatives of the Owner and the contractor to discuss the project's progress and to identify areas of concern to facilitate the construction.

12. Final Inspection - The consultant will conduct a site walk-through and final inspection of the project to confirm the completeness and quality of the construction. The consultant will coordinate the date and time of the final inspection via teleconferences, letters, faxes and email to the Owner, the FAA, the FDOT, the RPR, and the contractor. The consultant will prepare a summary report of the final inspection, including a punch list of work items that the contractor must accomplish to complete the project. The consultant will distribute the summary report to the Owner, the FAA, the FDOT, the RPR, and the contractor. Consultant will attend final inspection of the completed construction and prepare a punch-list report on any deficiencies, corrective actions required, etc., as determined at said inspection.

NOTE: In the performance of construction phase services, the CONSULTANT shall not be responsible for the acts or omissions of any contractor, any subcontractor, or any of the contractor's or subcontractor's agents or employees, or any other persons (except his own employees and agents) on the PROJECT or otherwise performing any of the work of the PROJECT, including the contractor's means, methods, or procedures of construction, or issue directions or be responsible for the safety procedures and programs in connection with the contractor's work.

IV. SPECIAL SERVICES

The services to be rendered by the CONSULTANT included under this Article are defined as Special Services in accordance with FAA AC 150/5100-14. The following are among the Special Services to be performed by the CONSULTANT:

- A. Control & Testing of Construction Materials
- B. Part-Time Inspection + Expenses
- C. Record Drawings

B. Control and Testing of Construction Materials

The CONSULTANT will arrange for the work necessary to provide for the proper control and testing of construction materials, per FAA/FDOT specifications, and in conformance with the contract documents. This work will include:

1. Provide asphalt and/or concrete plant inspection and materials reporting and supervision, on all days of paving / pouring, as applicable.
2. Review job mix formula for bituminous and portland cement concrete pavements or foundations, to be furnished for the PROJECT, as applicable.
3. Obtain samples and have necessary laboratory testing performed on aggregates, on site soils and excavation/embankment materials, base and sub-base mixed materials, as per the project design plans, as applicable.
4. Conduct field density tests to check the compaction of subgrades, fills, base, and subbase

courses, as applicable.

5. Determine in-place density of bituminous concrete pavements by laboratory testing in accordance with FAA regulations and design/construction standards, as applicable.
6. Take field LBR or CBR samples for testing with design requirements, as applicable.
7. Conduct slump, air, concrete cylinder, and/or flexural beam tests for all specified portland cement concrete used on the project, per the contract documents, as applicable.

A. Part-Time Resident Project Representative (RPR)

The CONSULTANT will furnish part-time RPR services throughout the estimated 90 calendar day (30 part-time working days) construction period for the PROJECT. The RPR will in general:

1. Be present two to three days per week, part-time, as necessary to observe the construction activities for conformance with the intent of the design and FAA/FDOT standards. The consultant will provide a qualified construction RPR to observe that the construction is carried out in reasonably close conformity with the contract documents and in accordance with the customary practices of professional engineers and consultants.
2. Measure, compute, and/or monitor quantities of work performed and quantities of materials in-place for partial and final payments to the contractor. The RPR will prepare and maintain cost estimates and construction quantity estimates for use in preparing monthly payment reimbursement requests and for monitoring the progress of the consultant's work. The RPR will prepare daily construction progress reports of the construction activities that are observed and will submit the reports to the consultant for review. The RPR will prepare monthly construction summary reports of completed work that has been accepted and approved and will submit the reports to the consultant for review.
3. Review and approve initial requests for monthly and final payments to the contractor, prior to forwarding to the CONSULTANT for further review and approval.
4. Coordinate the construction activity with the SPONSOR and attend construction meetings.
5. Review up-to-date as-built drawings completed by and received from the Contractor. Maintain a separate set of red-lines for consolidation with the Contractor's red-line annotations of the construction plans and for incorporation into the record drawings by the CONSULTANT.
6. Advise CONSULTANT of any construction problems, RFIs, and any necessary Change Order work, and make suggestions for resolution.
7. Attend the pre-construction conference and final inspection.
8. The RPR will be the consultant's primary contact with the contractor and their subcontractors during the course of construction. The RPR will be available to meet with the representatives of the Owner, the FAA, the FDOT, and other interested parties at the project location. The RPR will coordinate and supervise the consultant's subconsultants and personnel who are performing on-site testing, surveying, or other project related services.

9. The RPR will monitor and coordinate the construction progress; will coordinate with the Owner, the consultant, and the contractor; will provide construction oversight to ensure that the work is proceeding according to the construction contract documents; and will notify the consultant if problems, disputes, or changes arise during the course of construction.
10. Review and approve the Contractor's payroll and wage rates per federal standards, prior to forwarding to the CONSULTANT for further review and approval. The RPR will conduct Federal wage rate surveys with the contractor's personnel and their sub-contractor's personnel to ensure compliance with the U.S. Department of Labor regulations for federally funded construction projects. The RPR will submit the wage rate survey records to the consultant for review.
11. The RPR will assist the contractor with construction surveying to identify the limits of work, to determine elevations and grades, to locate physical features discovered during the course of construction, and to calculate quantities of materials either removed or utilized on the project. The contractor's construction survey data will be incorporated into the record drawings at the completion of the project. The consultant will provide the RPR with CADD support to plot the results of the construction survey data.

Expenses: The consultant/RPR will incur certain project related expenses during the course of the technical observation of construction phase of the work which may include but will not be limited to: meals, lodging, mileage cost at current year IRS rates per mile, tolls, overnight shipping, prints, photocopies, equipment rental, supplies, long distance telephone calls from the field, and miscellaneous vendor invoices. Refer to Exhibit C – Professional Services Compensation for detailed breakdown.

E. Record Drawings

Prepare record drawings based upon record information submitted by the contractor and RPR, and provide one set of hard-copy black-line drawings on bond paper to the SPONSOR. An updated hard-copy paper black-line bond paper Airport Layout Plan will be delivered to the SPONSOR, FAA, and FDOT at this time as well. This phase includes the project close-out report.

1. **Record Drawings** - The consultant will prepare the record drawings and final quantities representing the completed project and reflecting the actual work accomplished during construction. The consultant will distribute the record drawings to the Owner, the FAA, and the state for signatures. The consultant will prepare and distribute the record drawings to the Owner. The consultant will provide the Owner with electronic files of the record drawings in PDF format. All AutoCAD files, and any other changeable electronic media will remain the property of the CONSULTANT. However, electronic CADD files will be delivered to the SPONSOR at the end of the project under this task. CADD and other changeable electronic files will be delivered to the SPONSOR upon request at later dates, at no additional cost to the SPONSOR for third party use. CONSULTANT will require an electronic disclaimer be signed by third parties receiving such electronic files and delivered by the CONSULTANT on behalf of the SPONSOR for work product patents, designs, and copyrights.
2. **Airport Layout Plan Drawing Update** - The consultant will update the electronic versions of the Airport Layout Plan drawing which is identified as Sheet 3 of the Airport Layout Plan drawing set. The consultant will update the drawing to reflect the actual work accomplished by the project, as applicable.

3. **Project Close Out Report** - The consultant will prepare the final project documentation in the form of a project close out report that consolidates the project related information that will be required by the FAA to formally close out the project. The consultant will include in the close out report all general, fiscal, miscellaneous, engineering and construction information, and submissions/certifications listed on the FAA project closure summary checklist. The consultant will distribute one (1) copy of the project close out report each to the Owner, the FAA, and the FDOT.

V. ADDITIONAL SERVICES

The following services are not included as part of Basic or Special Services provided under this SUPPLEMENTAL AGREEMENT, nor compensated for under Exhibit C. CONSULTANT shall not provide any such Additional Services without written approval from the SPONSOR.

A. BASIC SERVICES: The following services are **NOT** to be performed by the CONSULTANT under this AGREEMENT.

1. **Design Phase Services:** The following design services are NOT to be performed by the CONSULTANT under this AGREEMENT.
 - a. Wetland Permitting and Mitigation Services.
 - b. Development of Regional Impacts (DRI), or Environmental Assessments (EA), or Environmental Impact Statements (EIS).
 - c. Ecological Services pertaining to the actual relocation of an endangered, threatened, or otherwise protected biological species determined to be impacted by the PROJECT.
 - d. Major changes made by the City after the 90% Design Review Meeting. Any changes made by the City after the 100% final plans are submitted.
 - e. Changes necessary to the Design Documents resulting from errors in work submitted by any Sub-consultant (contracting either directly with the CONSULTANT or with the SPONSOR) which is selected solely by the SPONSOR. This includes, but is not limited to, land survey, civil, water/wastewater, geotechnical, architectural, electro-mechanical, HVAC, power electronics, environmental or any others.
 - f. Any stormwater permitting services required by the introduction of additional impervious surfaces due to any change by the SPONSOR to the design scope. Also, preparation of modifications to the PROJECT requested by permitting agencies. Any major changes in the drainage design made by the SPONSOR or the permitting agencies after a majority (greater than 90%) of the drainage design work has been performed by CONSULTANT.

B. SPECIAL SERVICES: The following services are **NOT** to be performed by the CONSULTANT under this AGREEMENT.

1. Biological and Wetlands Investigation

No Biological or wetlands investigation is anticipated on this project. The CONSULTANT shall NOT retain the services of a sub-consultant. An investigation of the

proposed project site and surrounding area in regards to possible wetland and biological species impacts, if necessary, will be an additional service.

2. Stormwater Permitting

No stormwater permitting will be performed under this agreement, except that required for formulation of the design/build criteria performance package and necessary to receive competitive bids.

C. OTHER SERVICES

Any other services not specifically listed and compensated for as shown in Exhibit C.

VI. BASIC ASSUMPTIONS

The following is a list of assumptions which forms the basis of CONSULTANT's cost proposal for providing the services for the PROJECT outlined herein. It must be noted that any change to these basic assumptions constitutes a change in the PROJECT scope and may constitute a revision to the fee proposal and corresponding contract addendum.

A. In the absence of other known standards identified herein, all contract documents (front end, technical specifications, and construction drawings) will be developed utilizing CONSULTANT'S selected format, which for state and federally funded projects is based on FAA/FDOT standards.

B. All construction drawings will be 34" x 22" or larger and will be created in AutoCAD 2018 Civil 3D or later.

C. Specifications, reports and other word processing letters/memorandums/reports, etc. shall be created in Microsoft Word 2010 or later, while spreadsheets shall be created in Microsoft Excel 2010 or later.

D. CONSULTANT's Project Manager and/or Project Engineer, as necessary, will attend a maximum of the number of meetings identified below during the course of design phases. These meetings will be held at the airport or SPONSOR Offices, as necessary, and include:

- (1) 30% / Preliminary Design Review
- (1) 90% / Design Review
- (1) Bid Opening
- (1) Pre-Construction Meeting

E. All data collection efforts requiring CONSULTANT or its sub-consultants' personnel to be within the safety areas of the Airport Operations Areas (AOA) will be performed during daylight hours with the appropriate taxiways on a safety men working alert pull-back basis unless otherwise directed by the SPONSOR or FDOT/FAA.

F. All as-built drawings necessary for the development of the base plans for the PROJECT will be compiled by the SPONSOR for incorporation and consideration by the CONSULTANT during the design.

G. The work shall be completed in accordance with the schedule provided during PROJECT initiation but will not be more than twenty four (24) months from the date of the SPONSOR's Notice to Proceed to the CONSULTANT. Failure of the SPONSOR, FAA and/or FDOT or other agency to meet the deliverable

dates for provision of review comments may be justification for obtaining schedule extensions.

H. CONSULTANT will transmit design stage review submissions to the SPONSOR and each submission shall be limited to 3 sets (1 set equals the construction plans for 30% and 90%, and contract documents, drawings, technical specifications, and the Engineer's Report for 100% plans). CONSULTANT will provide draft letters to the SPONSOR for SPONSOR's transmission of these submissions from the SPONSOR to FAA and/or FDOT. Drawings will be either blacklines on laser, inkjet, or thermal bond paper.

I. All permits required as a result of the PROJECT other than mentioned herein shall be obtained by either the SPONSOR or the successful contractor as appropriate prior to the beginning of the construction of the PROJECT.

J. In accordance with the preliminary cost estimates for the PROJECT, the total construction budget for the PROJECT is understood to be between \$300,000 and \$400,000. If at any time during the performance of these Consulting services it is anticipated that this budget appears to be in jeopardy of being overrun (CONSULTANT will be monitoring project costs), the CONSULTANT will notify the SPONSOR immediately.

VII. SPONSOR'S RESPONSIBILITIES

SPONSOR shall do the following in a timely manner so as not to delay the services of CONSULTANT:

A. Designate a person to act as SPONSOR's representative with respect to the services to be rendered under this Supplemental Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define SPONSOR's policies and decisions with respect to the CONSULTANT's services for the PROJECT.

B. Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.

C. Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services, the following:

1. the data prepared by or service of others, including without limitation borings, probings and subsurface explorations, laboratory tests and inspections of pavement samples, materials and equipment;
2. copy of pertinent utility information;
3. property, boundary, easement, right-of-way, topographic and utility surveys;
4. other pertinent documents.

D. Furnish to CONSULTANT, all results, reports, data, studies, generated by other consultants retained by the SPONSOR in association with this project, and as specified under "Additional Services".

VIII. EXHIBITS

The following exhibits are referenced and made a part of this attachment:

EXHIBIT B – PROJECT CONCEPT SKETCH EXHIBIT C – PROFESSIONAL SERVICES COMPENSATION

IX. DELIVERABLES SUMMARY

Payment for the above listed items or tasks will be made after the following deliverables are received or milestones occur:

- A. 30%, 90% design level plans and engineer's report – Print and submit 3 sets of half size (bond blackline or equivalent prints) for the Sponsor to distribute to the FAA/FDOT and others, as necessary. Unlimited PDF versions.
- B. 100% Design Stage Plans and specifications - Print and submit 3 sets of half size (bond blackline or equivalent prints) for the Sponsor to distribute to the FAA/FDOT and others. Unlimited PDF versions.
- C. Record Drawings - Print and submit 3 sets of half size plans (bond blackline or equivalent prints) for the Sponsor to distribute to the FAA/FDOT and others. Unlimited PDF versions.

EXHIBIT B - PROJECT SKETCH

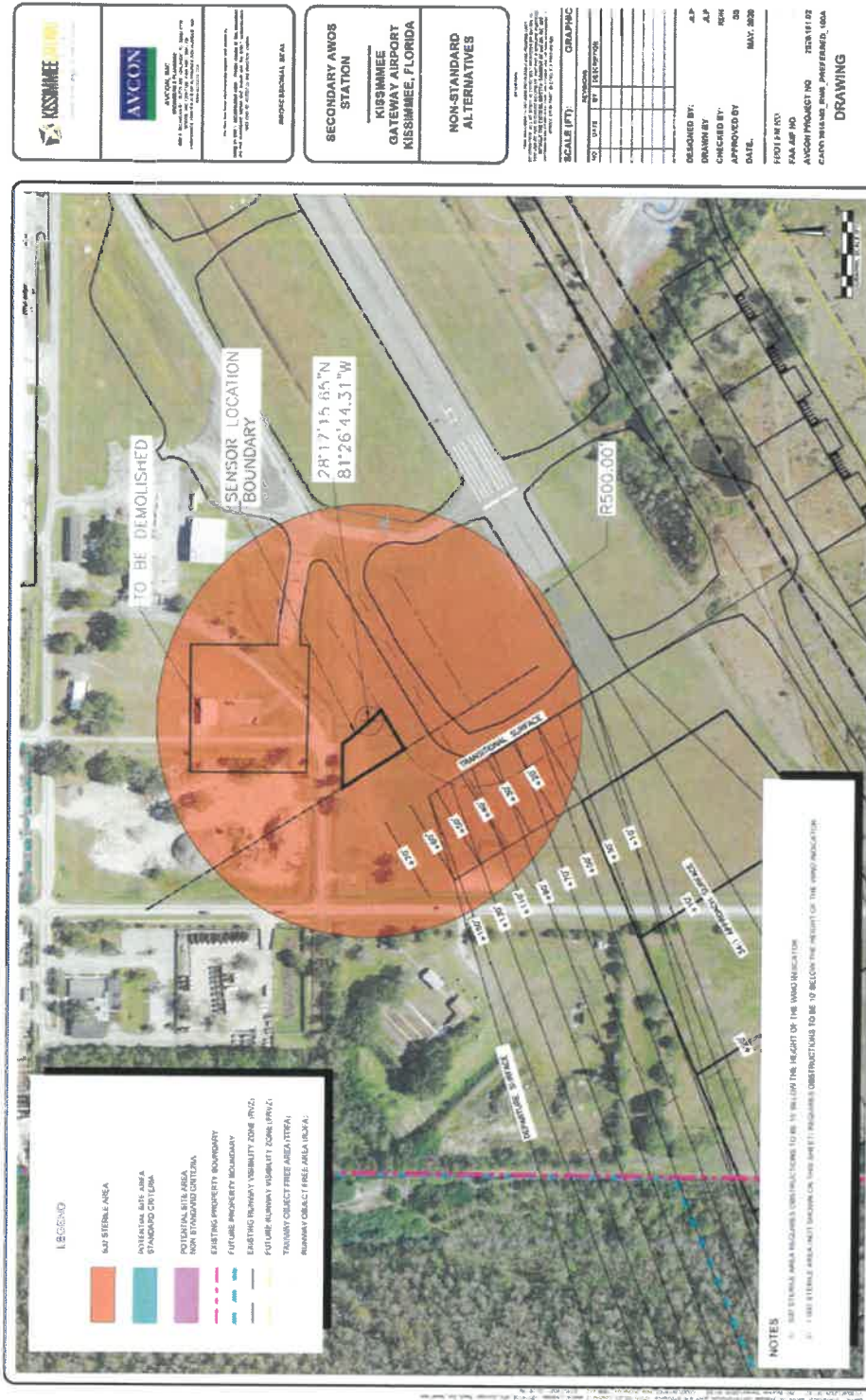


EXHIBIT C**PROFESSIONAL SERVICES COMPENSATION****SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD****CITY OF KISSIMMEE GATEWAY AIRPORT, KISSIMMEE, FLORIDA**

Invoicing shall be made monthly per each phase as they progress to completion on a percent complete basis. The lump sum fees are complete and inclusive of all labor, expenses, overhead costs, general and administrative costs of doing business, direct costs, and profit.

AVCON Sub- Task	Service Description	Compensation	Method
I. Basic Services			
1	A. Design	\$54,500.00	Lump Sum
2	B. Bidding	\$5,000.00	Lump Sum
3	C. Construction Administration	\$13,000.00	Lump Sum
SUB-TOTAL Basic Services		\$72,500.00	
II. Special Services			
1	A. Control & Testing of Construction Materials	\$3,500.00	Lump Sum
2	B. Part-Time Inspection + Expenses	\$37,492.50	Lump Sum
3	C. Record Drawings	\$3,000.00	Lump Sum
SUB-TOTAL Special Services		\$43,992.50	
GRAND TOTAL All Services		\$116,492.50	

Funding Share Level Breakdown		
FDOT	\$93,194.00	80%
City	\$23,298.50	20%
Amendment Total	\$116,492.50	

Part-Time Inspection Fees and Expenses Calculations:Internal Revenue Service M&IE, and mileage 2020

Part time Inspection (90 cal days - 30 work days - 10hrs / day)	\$1,150.00	per day	30	\$34,500.00
Part time Inspection - Mileage - 50 miles/day round trip @ \$0.575/mile	\$28.75	per day	30	\$862.50
Part time Inspection - Tolls	\$5.00	per day	30	\$150.00
Part time Inspection - M&IE	\$66.00	per day	30	\$1,980.00
				\$37,492.50

END OF AMENDMENT

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

Financial Project Number(s): (item-segment-phase-sequence) 449265-1-94-01	Fund(s): Work Activity Code/Function: Federal Number/Federal Award Identification Number (FAIN) – Transit only:	DPTO 215 N/A N/A 80-269-4759	FLAIR Category: 088719 Object Code: 751000 Org. Code: 55052000531 Vendor Number: VF596000348026
Contract Number:	Federal Award Date:		
CFDA Number: N/A	Agency DUNS Number:		
CFDA Title: N/A			
CSFA Number: 55.004			
CSFA Title: Aviation Grant Program			

THIS PUBLIC TRANSPORTATION GRANT AGREEMENT ("Agreement") is entered into _____, by and between the State of Florida, Department of Transportation, ("Department"), and City of Kissimmee, ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. Authority.** The Agency, by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D", Agency Resolution** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section(s) 332.007, Florida Statutes, to enter into this Agreement.
- 2. Purpose of Agreement.** The purpose of this Agreement is to provide for the Department's participation in Design, Bid, and Construct Automated Weather Observation System (AWOS) at Kissimmee Gateway Airport, as further described in **Exhibit "A", Project Description and Responsibilities**, attached and incorporated into this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
- 3. Program Area.** For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- ☒ **Aviation**
- ☐ **Seaports**
- ☐ **Transit**
- ☐ **Intermodal**
- ☐ **Rail Crossing Closure**
- ☐ **Match to Direct Federal Funding (Aviation or Transit)**
- ☐ (Note: Section 15 and Exhibit G do not apply to federally matched funding)
- ☐ **Other**

- 4. Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

- ☒ Exhibit A: Project Description and Responsibilities
- ☒ Exhibit B: Schedule of Financial Assistance
- ☐ *Exhibit B1: Deferred Reimbursement Financial Provisions
- ☐ *Exhibit B2: Advance Payment Financial Provisions
- ☒ *Exhibit C: Terms and Conditions of Construction
- ☒ Exhibit D: Agency Resolution
- ☒ Exhibit E: Program Specific Terms and Conditions
- ☒ Exhibit F: Contract Payment Requirements
- ☒ *Exhibit G: Audit Requirements for Awards of State Financial Assistance

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- ___ *Exhibit H: Audit Requirements for Awards of Federal Financial Assistance
___ *Additional Exhibit(s):

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

5. Time. Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 1, 2024. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. ___ If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the ___ day of ___, or within ___ days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. Notwithstanding any other provision of this Agreement, if the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.

d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

9. Project Cost:

- a. The estimated total cost of the Project is \$375,000. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$300,000 and, the Department's participation in the Project shall not exceed 80.00% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

X Travel expenses are NOT eligible for reimbursement under this Agreement.

 Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

f. Financial Consequences. Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

g. Invoice Processing. An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

h. Records Retention. The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

i. Progress Reports. Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

j. Submission of Other Documents. The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- k. Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- l. Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:
- "The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
- o. Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

in writing by the Department. Specific unallowable costs may be listed in **Exhibit "A", Project Description and Responsibilities**.

11. General Requirements. The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. Necessary Permits Certification.** The Agency shall certify to the Department that the Agency's design consultant and/or construction contractor has secured the necessary permits.
- b. Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
- c. Notification Requirements When Performing Construction on Department's Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department's right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i.** Require the construction work of the Project that is on the Department's right-of-way to be performed by a Department prequalified contractor, or
 - ii.** Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
- d.** ☐ If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
- e.** ☐ If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i.** ☐ Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii.** ☐ Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii.** ☐ Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
- f. Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
- g. Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

- a. Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

- 13. Maintenance Obligations.** In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions “a” and “b” above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

- 15. Single Audit.** The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
- i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “H”, Audit Requirements for Awards of Federal Financial Assistance**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Audit Requirements for Awards of State Financial Assistance**, to this Agreement indicates state financial

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
 - viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
 - c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. **Convicted Vendor List.** 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 on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendor List.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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.
- c. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- h. **Executive Order 20-44.** Pursuant to Governor's Executive Order 20-44, if the Agency is required by the Internal Revenue Code to file IRS Form 990 and is named in statute with which the Department must form a sole-source, public-private agreement; or through contract or other agreement with the State, annually receives 50% or more of its budget from the State or from a combination of State and Federal funds, Recipient shall submit an Annual Report to the Department, including the most recent IRS Form 990, detailing the total compensation for each member of the Agency executive leadership team. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Agency shall inform the Department of any changes in total executive compensation during the period between the filing of Annual Reports within 60 days of any change taking effect. All compensation reports shall detail the percentage of executive leadership compensation received directly from all State and/or Federal allocations to the Agency. Annual Reports shall be in the form approved by the Department and shall be submitted to the Department at fdotsingleaudit@dot.state.fl.us within 180 days following the end of each tax year of the Agency receiving Department funding.
- i. **Design Services and Construction Engineering and Inspection Services.** If the Project is wholly or partially funded by the Department and administered by a local governmental entity, except for a seaport listed in Section 311.09, Florida Statutes, the entity performing design and construction engineering and inspection services may not be the same entity.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

subcontractor, in connection with this Agreement. Additionally, the Agency shall indemnify and hold harmless the State of Florida, Department of Transportation, including the Department's officers 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 intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including the Department's officers 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 intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement."

- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies,

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.
- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**STRATEGIC
DEVELOPMENT
OGC 04/21

- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).
- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY City of Kissimmee

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: Loreen Bobo, P.E.

Title: _____

Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:

Daniel L. McDermott

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****EXHIBIT A****Project Description and Responsibilities**

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): Design, Bidding, Acquisition, Installation and Training of FAA required Automated Weather Observation System (AWOS). This is required to report certified data: wind speed and direction, wind gust, variable wind direction, temperature, dewpoint, altimeter setting, density altitude, and visibility.

B. Project Location (limits, city, county, map): Kissimmee Gateway Airport/Kissimmee, FL/Osceola

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): As required by 215.971, F.S., this scope of work includes but is not limited to consultant and design fees, survey and geotechnical costs, permitting, bid and award, construction inspection and material testing costs, mobilization and demobilization, purchase, delivery, installation, testing, commissioning of the equipment, coordination with all necessary agencies; and site preparation (earthwork and electrical work). It includes all materials, equipment, labor, and incidentals to complete a Weather Reporting Equipment installation project. The Sponsor will comply with Aviation Program Assurances.

The specifics of the Project Scope for the design will include a site study for the new system to be reviewed and approved by the FAA. System design and specifications will be prepared for the auxiliary weather sensor components required by FAA to supplement the existing on-airport equipment to maintain Air Traffic Control Tower (ATCT) operations.

The specifics of the Project Scope for construction will be described in and limited by all Design and Bid documents provided by the Sponsors Engineer. Together with all plan updates, necessary design variations, expectations, and change orders approved by the sponsor.

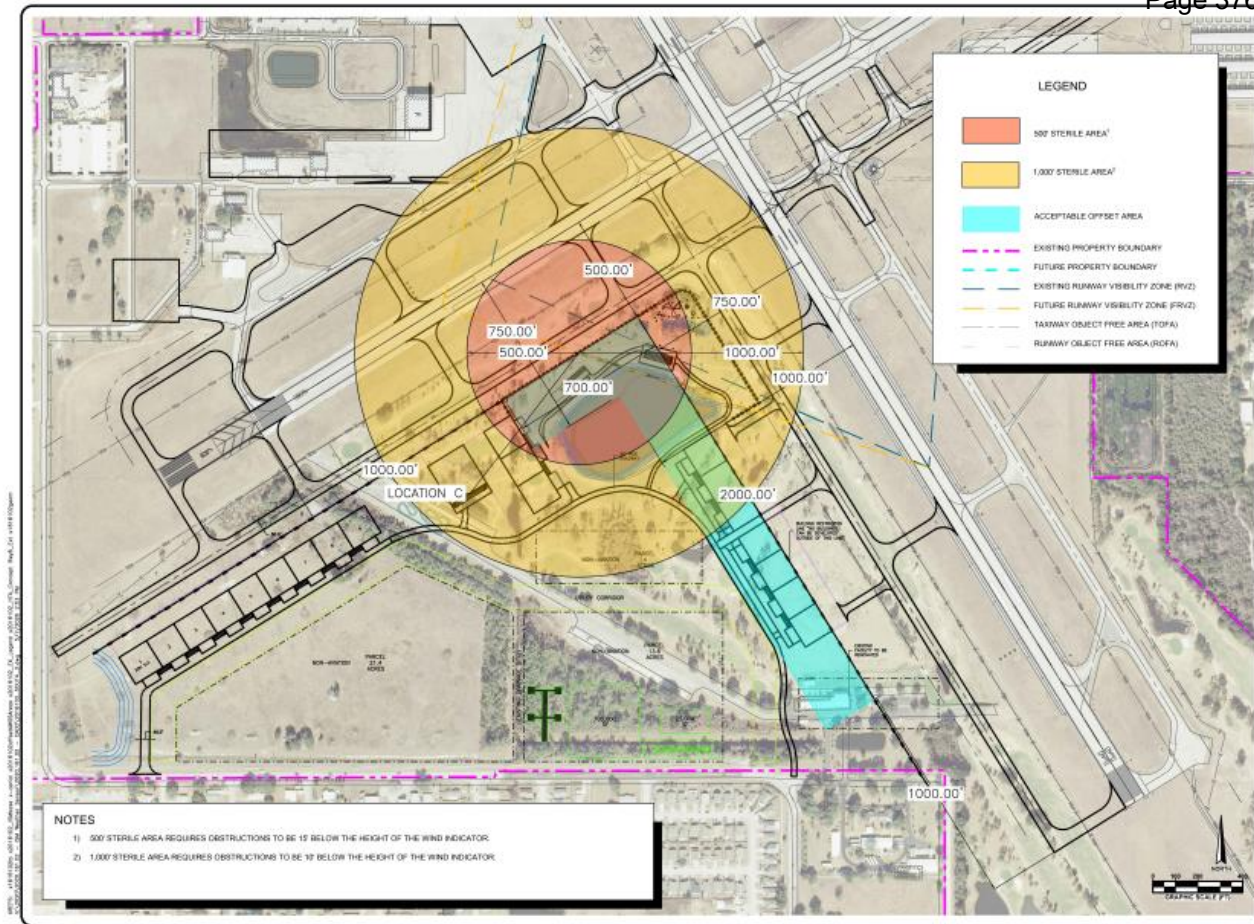
D. Deliverable(s): Final close out documents to be uploaded into Jacip.

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to): Stored material

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants. Operating grants may be issued for a term not to exceed three years from execution. The original grant agreement will include funding for year one. Funding for years two and three will be added by amendment as long as the grantee has submitted all invoices on schedule and the project deliverables for the year have been met.



AVCON
 AVCON, INC.
 ENGINEERS & ARCHITECTS
 10015 MONROE ST., SUITE 200, ORLANDO, FL 32837
 (407) 261-1000 FAX (407) 261-1001
 www.avconinc.com

This seal has been electronically signed and verified by:
 Avcon Inc. Professional Seal. Printed copies of this document
 are not valid without the original and the seal is not a requirement
 for the use of this document.

PROFESSIONAL SEAL

**AUXILIARY WEATHER
 STATION**

**KISSIMMEE
 GATEWAY AIRPORT
 KISSIMMEE, FLORIDA**

**SOUTH 2 ALTERNATIVE
 RECOMMENDED**

SCALE (FT): GRAPHIC

REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED BY: SES
 DRAWN BY: DWN
 CHECKED BY: CKD
 APPROVED BY: GS
 DATE: MAY, 2020

FDOT FM NO. -
 FAA AIP NO. -
 AVCON PROJECT NO. 2020.181.02
 CADD 2318102_SOUTH_2

**DRAWING
 EXHIBIT 3**

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

EXHIBIT B**Schedule of Financial Assistance**

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
449265-1-94-01	DPTO	088719	2021	751000	55.004	Aviation Grant Program	\$300,000
449265-1-94-01	LF	088719	2021	751000	55.004	Aviation Grant Program	\$75,000
Total Financial Assistance							\$375,000

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Planning	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Environmental/Design/Construction	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Capital Equipment/ Preventative Maintenance	\$300,000	\$75,000	\$0	\$375,000	80.00	20.00	0.00
Match to Direct Federal Funding	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Mobility Management (Transit Only)	\$0	\$0	\$0	\$0	0.00	0.00	0.00
Totals	\$300,000	\$75,000	\$0	\$375,000			

*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement.

BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category (grant phase) has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Joseph A. Jerkins

Department Grant Manager Name

Signature

Date

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****EXHIBIT C****TERMS AND CONDITIONS OF CONSTRUCTION****1. Design and Construction Standards and Required Approvals.**

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Joseph A. Jerkins (email: joseph.jerkins@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department's Right of Way. If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is ____.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

- i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense,

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t. Restricted hours of operation will be as follows, unless otherwise approved by the Department's District Construction Engineer or designee (insert hours and days of the week for restricted operation): N/A
- u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contact info:

800-780-7102

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

- 3. **Engineer's Certification of Compliance.** The Agency shall complete and submit and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****ENGINEER'S CERTIFICATION OF COMPLIANCE**

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans for construction on the Department's Right of Way certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Page 383 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

EXHIBIT E

**PROGRAM SPECIFIC TERMS AND CONDITIONS - AVIATION
AVIATION PROGRAM ASSURANCES**

A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.
2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of **Exhibit “A”, Project Description and Responsibilities**, and **Exhibit “B”, Schedule of Financial Assistance**, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.
8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department’s continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.
10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency’s eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. **General Certification.** The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):
 - a. **Florida Statutes (F.S.)**
 - Chapter 163, F.S., Intergovernmental Programs
 - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
 - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
 - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
 - Chapter 332, F.S., Airports and Other Air Navigation Facilities
 - Chapter 333, F.S., Airport Zoning

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

b. Florida Administrative Code (FAC)

- Chapter 73C-41, FAC, Community Planning; Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300, FAC, Open Burning, Prohibitions
- Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

- Eight Steps of Building a New Airport
- Florida Airport Revenue Use Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Airport Compatible Land Use Guidebook

- 2. Construction Certification.** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

a. Federal Requirements

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design
- FAA AC 150/5370-2, Operational Safety on Airports During Construction
- FAA AC 150/5370-10, Standards for Specifying Construction of Airports

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, FAC, Airfield Standards for Licensed Airports
- Standard Specifications for Construction of General Aviation Airports
- Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

- 3. Land Acquisition Certification.** The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

a. Federal Requirements

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. Florida Requirements

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

C. Agency Authority.

- 1. Legal Authority.** The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.
- 2. Financial Authority.** The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
- c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

3. Preserving Rights and Powers.

- a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. Hazard Removal and Mitigation.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- a. For airport hazards located on airport controlled property, the Agency shall clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.
- b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.
- c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

6. Consistency with Local Government Plans.

- a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.
- b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.
- c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

- a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.
- b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:
 - 1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
 - 2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
 - 3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

- c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.
- d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.

8. Airport Financial Plan.

- a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency's Airport financial plan must comply with the following conditions:
 - 1) The Airport financial plan will be a part of the Airport Master Plan.
 - 2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.
 - 3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.
- b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

- 9. Airport Revenue.** The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.

11. Public-Private Partnership for Aeronautical Uses.

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.

12. Economic Nondiscrimination.

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
 - 1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- 2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

14. Operations and Maintenance.

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.
 - 1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
 - 2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
 - 3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.
- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.

16. Project Implementation.

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

18. Airfield Access.

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

20. Consultant, Contractor, Scope, and Costs.

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such project materials available for public review, unless exempt from public disclosure.
 - 1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.
 - 2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.
- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
 - 1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
 - 2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
 - 3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

- a. **Laws.** Acquire the land in accordance with federal and/or state laws governing such action.
- b. **Administration.** Maintain direct control of Project administration, including:
 - 1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
 - 2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
 - 3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
 - 4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
 - 5) Establish a Project account for the purchase of the land.
 - 6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds.** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:
 - 1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - 2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
 - 3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
 - 4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.
- d. **New Airport.** If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:
 - 1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
 - 2) Complete an Airport Master Plan within two years of land purchase.
 - 3) Complete airport construction for basic operation within 10 years of land purchase.
- e. **Use of Land.** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.
- f. **Disposal of Land.** For the disposal of real property the Agency assures that it will comply with the following:
 - 1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- 2) Land will be considered to be needed for airport purposes under this assurance if:
 - a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
 - b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- 3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- 4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:**a. Project Certifications.** Certify Project compliances, including:

- 1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- 2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- 3) Completed construction complies with all applicable local building codes.
- 4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

- 1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
- 2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
- 3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
- 4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

c. Inspection and Approval. The Agency assures that:

- 1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
- 2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
- 3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS

Page 393 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

24. Noise Mitigation Projects. The Agency assures that it will:

- a. Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.
 - 1)** The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
 - 2)** The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.
- b. Private Agreements.** For noise compatibility projects on privately owned property:
 - 1)** The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
 - 2)** The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

- End of Exhibit E -

EXHIBIT F

Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address <https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Page 395 of 600

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 02/20

EXHIBIT G

AUDIT REQUIREMENTS FOR AWARDS OF STATE FINANCIAL ASSISTANCE

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:~

Awarding Agency: Florida Department of Transportation

State Project Title: Aviation Grant Program

CSFA Number: 55.004

***Award Amount:** \$300,000

*The award amount may change with amendments

Specific project information for CSFA Number 55.004 is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at:
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

ITEM 7.G**AMENDMENT #10 TO THE PROFESSIONAL SERVICE AGREEMENT WITH AVCON, INC. FOR BIDDING AND ENGINEERING SERVICES TO OVERSEE THE CONSTRUCTION OF A WEATHER STATION****Request**

Approval of amendment #10 to the professional service agreement between the City of Kissimmee and AVCON, Inc. dated December 19, 2017, for the design, bidding, and construction engineering services for the construction of a weather station.

Explanation

Due to the experience of AVCON Inc. in the aviation and planning field, the Kissimmee Gateway Airport has selected AVCON, Inc. to provide professional services to design, bid and oversee the construction of the Airport's weather station. Construction services will also include on-site inspections, control and testing of materials, and record drawings of final construction. AVCON, Inc. has an existing continuing services contract with the City.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
47070106-506393	AP2102	Decrease	\$375,000.00	\$116,492.50

Financial Summary:

Portions of this project are funded by the Florida Department of Transportation (80%) and the Kissimmee Gateway Airport (20%). The total project amount is \$375,000.00 with each agency funding the following amounts

FDOT-PTGA (FM No.: 449265-1-94-01) - \$300,000
Kissimmee Gateway Airport - \$75,000

Recommendation

Staff recommends Commission approval of amendment #10 to the professional service agreement between the City of Kissimmee and AVCON, Inc. dated December 19, 2017, for the design, bidding, and construction engineering services for the construction of a weather station.

REQUESTED CITY COMMISSION ACTION:

City of Kissimmee

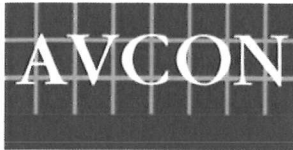
Approve

Department: Airport

Presenter:

Attachment(s):

1. AVCONScope-Amendment 10



AVCON, INC.
ENGINEERS & PLANNERS

5555 E. Michigan St., Suite 200
Orlando, Florida 32822
Phone: (407) 599-1122
Fax: (407) 599-1133
www.avconinc.com

**AMENDMENT NO. 10
TO THE
PROFESSIONAL SERVICES AGREEMENT**

BETWEEN

**CITY OF KISSIMMEE
KISSIMMEE, FLORIDA
(SPONSOR)**

AND

**AVCON, INC.
ORLANDO, FLORIDA
(CONSULTANT)**

This is a AMENDMENT entered into, effective this _____ day of _____ 20____, by and between the parties above described, WHEREAS, the SPONSOR and CONSULTANT have entered into a Master Consulting Agreement (Professional Services Agreement) dated December 19, 2017, hereinafter referred to as the MASTER AGREEMENT for the purpose of defining the general terms and conditions applicable to the initial and continuing contractual relationship between the parties hereto. Except for what is in this SUPPLEMENTAL AGREEMENT, all covenants, conditions, and obligations of the MASTER AGREEMENT not in conflict herewith shall remain in full force and effect.

NOW THEREFORE, in consideration of these premises and of the satisfactory performance by the CONSULTANT of the services hereinafter provided and for the payments to be made, therefore by the SPONSOR, the CONSULTANT and the SPONSOR do hereby agree to accomplish the work as follows:

SCOPE OF SERVICES:

Provide technical design and construction administration engineering services in connection with Attachment A as follows:

SECONDARY WEATHER SENSOR AT CT MEL- AWOS AI- DESIGN/BUILD

This project has a construction budget of between approximately \$300,000 and \$400,000 including construction engineering and inspection.

All Man-hours and Expenses are included in Lump Sum Costs as Attached. Reference is made to the Master Agreement for Professional Consulting Services and Fee Structure between Consultant and Client therein or as attached to this Supplemental Agreement.

The **LUMP SUM COST** of this AMENDMENT is **One Hundred Sixteen Thousand Four Hundred Ninety Two and 50/100 dollars (\$116,492.50)**, as detailed in Attachment A. The Client agrees to pay **AVCON** for its services based on approved monthly invoices.

The client project representative and **AVCON** shall jointly determine interim production and review milestones.

This AMENDMENT and all referenced attachments shall constitute the complete AMENDMENT for this assignment.

Sponsor Concurrence:

CITY OF KISSIMMEE

By: _____
Honorable Olga Gonzalez
Mayor - Commissioner

Date: _____

ATTEST:

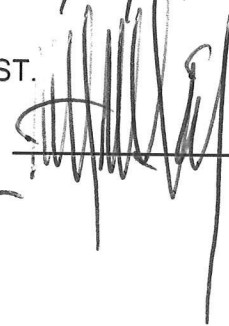
Consultant Concurrence:

AVCON, INC.

By: 
Authorized Signature
Sandeep Singh, P.E.
President

Date: 05/20/21

ATTEST.



ATTACHMENT A

SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD PERFORMANCE PACKAGE ENGINEERING (NON-FEDERAL)

The following parties are referred to hereafter: SPONSOR (SPONSOR - City of Kissimmee); CONSULTANT (SPONSOR's Consultant – AVCON, Inc.); FAA (Federal Aviation Administration); FDOT (Florida Department of Transportation); DISTRICT (South Florida Water Management District); FDEP (Florida Department of Environmental Protection);

Consulting Services for the PROJECT include design engineering phase services as follows: design to provide a performance design package including plans, contract documents, performance specifications, and bidding.

I. PROJECT DESCRIPTION

The work can generally be as described below, hereinafter called the PROJECT.

Due to the complex and highly specialized nature of the proposed equipment and foundations necessary for the proposed work, this scope will cover a design/build performance criteria package. Therefore, the work will consist of the level of effort required for the design/build performance criteria package, bidding, construction admin, record drawings, and part-time inspection for:

SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD (NON-FEDERAL)

- Locate the AUXILIARY WEATHER SENSOR on the Airport, and update to the Airport Layout Plan accordingly.
- Formulate performance specifications for AUXILIARY WEATHER SENSOR components, that are required by FAA to supplement the existing on-airport equipment to maintain ATCT operation. The sensor is required to report certified data of: wind speed and direction, wind gust, variable wind direction, temperature, dewpoint, altimeter setting, density altitude, visibility (AWOS I), to be verified.
- Prepare performance plans, details, contract documents, and specifications package project manual for bidding to contractors/interested parties.
- Submit the FAA 7460-1 and Site Location plans for permission from FAA to build the AUXILIARY WEATHER SENSOR as a permanent installation on the Airport.
- Bid the project to obtain competitive bid pricing for construction

The contractor design/builder will be required to obtain necessary FCC commissioning frequency permitting / licensing, and all other permits, licenses, and fees.

Siting and approval by FAA will be part of the design coordination effort.

II. PROJECT SERVICES

The PROJECT Services are divided into the FAA categorized Basic Services and Special Services per Advisory Circular 150/5100-14. **Basic Services** are identified in Section III, and consist of the following phases:

- **Basic Services**

- A. Design

- B. Bidding
- C. Construction Admin

- **Special Services** are identified in Section IV and are sub-divided into following phases:

- A. Control & Testing of Construction Materials
- B. Part-Time Inspection + Expenses
- C. Record Drawings

Additional Services are identified in Section V, and include services not specifically performed in this SUPPLEMENTAL AGREEMENT, due to circumstances that may arise and which are beyond the control of the CONSULTANT, or due to not being applicable to the PROJECT.

III. BASIC SERVICES

The services to be rendered by the CONSULTANT included under this Article are defined as Basic Services in accordance with FAA AC 150/5100-14.

- A. Design.** Services to be rendered by the CONSULTANT during this phase include:
 1. Coordinate and provide for initial topographic survey and one geotechnical boring for the proposed Auxiliary Weather Sensor foundation.
 2. Prepare for, attend, and conduct one Kick-off / Pre-Design (30%) meeting in conjunction with City staff, Airport Tenants, FAA, FDOT, and others to review the conceptual design, to ensure direction and intent of the PROJECT and to answer questions from interested parties. Prepare and select the site for the new AUXILIARY WEATHER SENSOR and coordinate with FAA Non-Federal Program Implementation Manager (PIM).
 3. Identify any modifications to FAA/FDOT design standards and/or FAA/FDOT standard specifications and prepare a memorandum to the SPONSOR explaining advantages and alternates. CONSULTANT will coordinate SPONSOR approved deviations with the FAA/FDOT through approval, as necessary.
 4. Conduct at least one on-site field investigation, making notes, and taking photographs as necessary to clarify design parameters. Conduct interviews with applicable emergency services, utility, and Airport personnel.
 5. Prepare General and Special Provisions, Contract Forms, Technical Specifications. Use FAA/FDOT Standard Specifications, latest edition at the time of execution of this Professional Services Agreement. CONSULTANT may make modification(s) to these standards provided the changes are approved by SPONSOR, FAA, and FDOT. SPONSOR will be responsible for approving these prior to the coordination of the 100% certification letter submitted to the FDOT, and submission of plans and specifications to the FAA for approval (one for each design stage) as applicable.
 6. Prepare a complete set of construction drawings, in AutoCAD 2018 Civil 3D or later, detailing all of the proposed PROJECT construction (one set for each design stage). The plans will depict the primary project elements described above as separate schedules.
 7. Prepare Engineer's Report for the PROJECT, including an opinion of probable construction costs.

8. Prepare the 7460-1 documentation and file with the FAA.
9. At the 90% design development stages, submit the contract documents, drawings, technical specifications, and Engineer's report to the SPONSOR for review.
10. Prepare for, attend, one 90% Design Review conference, as necessary, in conjunction with SPONSOR and others to present design development and answer questions from interested parties.
11. Submit 100% certification letter to FDOT and Coordinate the Filing of FAA Airspace Checklist, Construction Safety and Phasing Plans, and remaining plans and specifications. A CSPP document will not be required since the project is not FAA funded.

B. Bidding.

1. Assistance with the actual advertising for bids, including assistance with advertisements for newspapers and construction trade publications. The actual cost of advertisement is included (bid invitation advertisement fee).
2. Assist SPONSOR in issuance of bid documents. Prepare, order, and assimilate bid sets including the construction plans and project manual to registered plans holders. Coordinate with plans rooms, SPONSOR, and others to arrange for delivery of bid sets, receive orders for bid sets, as well as manage and administer of bid sets in-house and to registered plans holders. Maintain a listing of registered plans holders, and dissemination to concerned parties.
3. Attend and assist the SPONSOR at one bid opening and advise as to matters relating to design as they may arise during the bidding period.
4. Prepare addenda as required and/or proposals, formulate responses to bidder questions, modify the plans and specifications as necessary, and general coordination and interpretation of the technical aspects of the bid documents.
5. Advise and make recommendations to SPONSOR during bidding, review the bids received as to the low responsive bidder quality, insurances, and references, and make determinations as to the efficacy of the bids. Prepare a recommendation to award letter, including a comprehensive bid tabulation with engineer's estimate. Coordinate with low responsive qualified bidder.

C. Construction Administration Phase services to be rendered by the CONSULTANT include:

1. Conduct one Pre-construction conference. The CONSULTANT will coordinate the time, date, and location of the preconstruction conference. The consultant will notify the Owner, the FAA, the FDOT, and other interested parties of the preconstruction conference and will invite their representatives to attend. The CONSULTANT will conduct the preconstruction conference in accordance with FAA AC 150/5300-9 *Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects* to ensure that the attendees are aware of the design, construction, and safety requirements of the project and are informed of their individual responsibilities.

3. General Administration - Consultation and advice to the SPONSOR during construction. The consultant will provide general consultation and advice to the Owner during the construction phase of the project. The consultant will provide general coordination between the Owner, FDOT, and the FAA during the construction phase of the project. The consultant will assist the Owner with the preparation and issuance of change orders, recommend construction specification interpretations, and advise the Owner as to the contractor's performance. The consultant will review daily progress reports, monthly construction progress reports, wage survey records, and certified payrolls. The consultant will distribute copies of the monthly construction progress reports to the Owner, the FAA, and the FDOT. The consultant will provide general supervision and support to the RPR including, but not limited to, coordinating field survey personnel, processing the RPR's weekly time sheets and expense sheets, providing technical documentation, providing field office supplies and materials, performing construction contract interpretation, analyzing unusual or unique developments or complications during construction, and communicating and corresponding with the contractor regarding contract administration, project changes, bonding and insurance issues, and other construction related matters. The consultant will communicate and coordinate with the contractor, Owner, FAA, FDOT, and RPR on a regular basis throughout the construction phase of the project in the form of teleconferences, letters, memos, faxes, and email.
4. Preparation of field sketches required to resolve actual field conditions encountered.
5. Reviewing detailed construction, shop, materials certifications, and erection drawings submitted by contractor for compliance with design concepts. The consultant will review the shop drawings and materials submittals that are furnished by the contractor as required by the construction contract documents. The consultant will either fully approve, conditionally approve, or reject the shop drawings and materials. The consultant will return conditionally approved and rejected shop drawings and materials submittals to the contractor for changes or revisions prior to the use of the materials on the project. The consultant will review up to three (3) resubmissions of a conditionally approved or rejected shop drawing or submittal. The consultant will prepare and maintain a submittal register identifying the submittal number, description, specification section, specification paragraph, received date, action date, and action taken. The consultant will distribute copies of the submittals and the updated submittal register to the Owner and the contractor.
6. Reviewing and analyzing laboratory and field soils test reports, and delivery certificates for materials and equipment, as necessary and required by the PROJECT scope.
7. Observation of initial operation performance tests and test strips required by specifications.
8. Review and approval of periodic estimates submitted by the Resident Project Representative for partial and final payments to the contractor.
9. Final review of contractor monthly pay applications, including any adjustments necessary, and preparation of the recommendation to pay (as appropriate) letter, with one or more copies of the certified approved version of the application.
10. Preparation and negotiation of change orders and supplemental agreements, Requests for Information (RFI), Engineer's Supplemental Instructions (ESI), or review and approval of field directive change orders.
11. Supervisory Site Visits - The consultant will make periodic supervisory visits to the

construction site to observe the progress, safety, and quality of the construction. The consultant will coordinate the site visits with the Owner and representatives of the contractor. The consultant's representatives will meet with the representatives of the Owner and the contractor to discuss the project's progress and to identify areas of concern to facilitate the construction.

12. Final Inspection - The consultant will conduct a site walk-through and final inspection of the project to confirm the completeness and quality of the construction. The consultant will coordinate the date and time of the final inspection via teleconferences, letters, faxes and email to the Owner, the FAA, the FDOT, the RPR, and the contractor. The consultant will prepare a summary report of the final inspection, including a punch list of work items that the contractor must accomplish to complete the project. The consultant will distribute the summary report to the Owner, the FAA, the FDOT, the RPR, and the contractor. Consultant will attend final inspection of the completed construction and prepare a punch-list report on any deficiencies, corrective actions required, etc., as determined at said inspection.

NOTE: In the performance of construction phase services, the CONSULTANT shall not be responsible for the acts or omissions of any contractor, any subcontractor, or any of the contractor's or subcontractor's agents or employees, or any other persons (except his own employees and agents) on the PROJECT or otherwise performing any of the work of the PROJECT, including the contractor's means, methods, or procedures of construction, or issue directions or be responsible for the safety procedures and programs in connection with the contractor's work.

IV. SPECIAL SERVICES

The services to be rendered by the CONSULTANT included under this Article are defined as Special Services in accordance with FAA AC 150/5100-14. The following are among the Special Services to be performed by the CONSULTANT:

- A. Control & Testing of Construction Materials
- B. Part-Time Inspection + Expenses
- C. Record Drawings

B. Control and Testing of Construction Materials

The CONSULTANT will arrange for the work necessary to provide for the proper control and testing of construction materials, per FAA/FDOT specifications, and in conformance with the contract documents. This work will include:

1. Provide asphalt and/or concrete plant inspection and materials reporting and supervision, on all days of paving / pouring, as applicable.
2. Review job mix formula for bituminous and portland cement concrete pavements or foundations, to be furnished for the PROJECT, as applicable.
3. Obtain samples and have necessary laboratory testing performed on aggregates, on site soils and excavation/embankment materials, base and sub-base mixed materials, as per the project design plans, as applicable.
4. Conduct field density tests to check the compaction of subgrades, fills, base, and subbase

courses, as applicable.

5. Determine in-place density of bituminous concrete pavements by laboratory testing in accordance with FAA regulations and design/construction standards, as applicable.
6. Take field LBR or CBR samples for testing with design requirements, as applicable.
7. Conduct slump, air, concrete cylinder, and/or flexural beam tests for all specified portland cement concrete used on the project, per the contract documents, as applicable.

A. Part-Time Resident Project Representative (RPR)

The CONSULTANT will furnish part-time RPR services throughout the estimated 90 calendar day (30 part-time working days) construction period for the PROJECT. The RPR will in general:

1. Be present two to three days per week, part-time, as necessary to observe the construction activities for conformance with the intent of the design and FAA/FDOT standards. The consultant will provide a qualified construction RPR to observe that the construction is carried out in reasonably close conformity with the contract documents and in accordance with the customary practices of professional engineers and consultants.
2. Measure, compute, and/or monitor quantities of work performed and quantities of materials in-place for partial and final payments to the contractor. The RPR will prepare and maintain cost estimates and construction quantity estimates for use in preparing monthly payment reimbursement requests and for monitoring the progress of the consultant's work. The RPR will prepare daily construction progress reports of the construction activities that are observed and will submit the reports to the consultant for review. The RPR will prepare monthly construction summary reports of completed work that has been accepted and approved and will submit the reports to the consultant for review.
3. Review and approve initial requests for monthly and final payments to the contractor, prior to forwarding to the CONSULTANT for further review and approval.
4. Coordinate the construction activity with the SPONSOR and attend construction meetings.
5. Review up-to-date as-built drawings completed by and received from the Contractor. Maintain a separate set of red-lines for consolidation with the Contractor's red-line annotations of the construction plans and for incorporation into the record drawings by the CONSULTANT.
6. Advise CONSULTANT of any construction problems, RFIs, and any necessary Change Order work, and make suggestions for resolution.
7. Attend the pre-construction conference and final inspection.
8. The RPR will be the consultant's primary contact with the contractor and their subcontractors during the course of construction. The RPR will be available to meet with the representatives of the Owner, the FAA, the FDOT, and other interested parties at the project location. The RPR will coordinate and supervise the consultant's subconsultants and personnel who are performing on-site testing, surveying, or other project related services.

9. The RPR will monitor and coordinate the construction progress; will coordinate with the Owner, the consultant, and the contractor; will provide construction oversight to ensure that the work is proceeding according to the construction contract documents; and will notify the consultant if problems, disputes, or changes arise during the course of construction.
10. Review and approve the Contractor's payroll and wage rates per federal standards, prior to forwarding to the CONSULTANT for further review and approval. The RPR will conduct Federal wage rate surveys with the contractor's personnel and their sub-contractor's personnel to ensure compliance with the U.S. Department of Labor regulations for federally funded construction projects. The RPR will submit the wage rate survey records to the consultant for review.
11. The RPR will assist the contractor with construction surveying to identify the limits of work, to determine elevations and grades, to locate physical features discovered during the course of construction, and to calculate quantities of materials either removed or utilized on the project. The contractor's construction survey data will be incorporated into the record drawings at the completion of the project. The consultant will provide the RPR with CADD support to plot the results of the construction survey data.

Expenses: The consultant/RPR will incur certain project related expenses during the course of the technical observation of construction phase of the work which may include but will not be limited to: meals, lodging, mileage cost at current year IRS rates per mile, tolls, overnight shipping, prints, photocopies, equipment rental, supplies, long distance telephone calls from the field, and miscellaneous vendor invoices. Refer to Exhibit C – Professional Services Compensation for detailed breakdown.

E. Record Drawings

Prepare record drawings based upon record information submitted by the contractor and RPR, and provide one set of hard-copy black-line drawings on bond paper to the SPONSOR. An updated hard-copy paper black-line bond paper Airport Layout Plan will be delivered to the SPONSOR, FAA, and FDOT at this time as well. This phase includes the project close-out report.

1. **Record Drawings** - The consultant will prepare the record drawings and final quantities representing the completed project and reflecting the actual work accomplished during construction. The consultant will distribute the record drawings to the Owner, the FAA, and the state for signatures. The consultant will prepare and distribute the record drawings to the Owner. The consultant will provide the Owner with electronic files of the record drawings in PDF format. All AutoCAD files, and any other changeable electronic media will remain the property of the CONSULTANT. However, electronic CADD files will be delivered to the SPONSOR at the end of the project under this task. CADD and other changeable electronic files will be delivered to the SPONSOR upon request at later dates, at no additional cost to the SPONSOR for third party use. CONSULTANT will require an electronic disclaimer be signed by third parties receiving such electronic files and delivered by the CONSULTANT on behalf of the SPONSOR for work product patents, designs, and copyrights.
2. **Airport Layout Plan Drawing Update** - The consultant will update the electronic versions of the Airport Layout Plan drawing which is identified as Sheet 3 of the Airport Layout Plan drawing set. The consultant will update the drawing to reflect the actual work accomplished by the project, as applicable.

3. **Project Close Out Report** - The consultant will prepare the final project documentation in the form of a project close out report that consolidates the project related information that will be required by the FAA to formally close out the project. The consultant will include in the close out report all general, fiscal, miscellaneous, engineering and construction information, and submissions/certifications listed on the FAA project closure summary checklist. The consultant will distribute one (1) copy of the project close out report each to the Owner, the FAA, and the FDOT.

V. ADDITIONAL SERVICES

The following services are not included as part of Basic or Special Services provided under this SUPPLEMENTAL AGREEMENT, nor compensated for under Exhibit C. CONSULTANT shall not provide any such Additional Services without written approval from the SPONSOR.

A. BASIC SERVICES: The following services are **NOT** to be performed by the CONSULTANT under this AGREEMENT.

1. **Design Phase Services:** The following design services are NOT to be performed by the CONSULTANT under this AGREEMENT.
 - a. Wetland Permitting and Mitigation Services.
 - b. Development of Regional Impacts (DRI), or Environmental Assessments (EA), or Environmental Impact Statements (EIS).
 - c. Ecological Services pertaining to the actual relocation of an endangered, threatened, or otherwise protected biological species determined to be impacted by the PROJECT.
 - d. Major changes made by the City after the 90% Design Review Meeting. Any changes made by the City after the 100% final plans are submitted.
 - e. Changes necessary to the Design Documents resulting from errors in work submitted by any Sub-consultant (contracting either directly with the CONSULTANT or with the SPONSOR) which is selected solely by the SPONSOR. This includes, but is not limited to, land survey, civil, water/wastewater, geotechnical, architectural, electro-mechanical, HVAC, power electronics, environmental or any others.
 - f. Any stormwater permitting services required by the introduction of additional impervious surfaces due to any change by the SPONSOR to the design scope. Also, preparation of modifications to the PROJECT requested by permitting agencies. Any major changes in the drainage design made by the SPONSOR or the permitting agencies after a majority (greater than 90%) of the drainage design work has been performed by CONSULTANT.

B. SPECIAL SERVICES: The following services are **NOT** to be performed by the CONSULTANT under this AGREEMENT.

1. Biological and Wetlands Investigation

No Biological or wetlands investigation is anticipated on this project. The CONSULTANT shall NOT retain the services of a sub-consultant. An investigation of the

proposed project site and surrounding area in regards to possible wetland and biological species impacts, if necessary, will be an additional service.

2. Stormwater Permitting

No stormwater permitting will be performed under this agreement, except that required for formulation of the design/build criteria performance package and necessary to receive competitive bids.

C. OTHER SERVICES

Any other services not specifically listed and compensated for as shown in Exhibit C.

VI. BASIC ASSUMPTIONS

The following is a list of assumptions which forms the basis of CONSULTANT's cost proposal for providing the services for the PROJECT outlined herein. It must be noted that any change to these basic assumptions constitutes a change in the PROJECT scope and may constitute a revision to the fee proposal and corresponding contract addendum.

- A. In the absence of other known standards identified herein, all contract documents (front end, technical specifications, and construction drawings) will be developed utilizing CONSULTANT'S selected format, which for state and federally funded projects is based on FAA/FDOT standards.
- B. All construction drawings will be 34" x 22" or larger and will be created in AutoCAD 2018 Civil 3D or later.
- C. Specifications, reports and other word processing letters/memorandums/reports, etc. shall be created in Microsoft Word 2010 or later, while spreadsheets shall be created in Microsoft Excel 2010 or later.
- D. CONSULTANT's Project Manager and/or Project Engineer, as necessary, will attend a maximum of the number of meetings identified below during the course of design phases. These meetings will be held at the airport or SPONSOR Offices, as necessary, and include:
 - (1) 30% / Preliminary Design Review
 - (1) 90% / Design Review
 - (1) Bid Opening
 - (1) Pre-Construction Meeting
- E. All data collection efforts requiring CONSULTANT or its sub-consultants' personnel to be within the safety areas of the Airport Operations Areas (AOA) will be performed during daylight hours with the appropriate taxiways on a safety men working alert pull-back basis unless otherwise directed by the SPONSOR or FDOT/FAA.
- F. All as-built drawings necessary for the development of the base plans for the PROJECT will be compiled by the SPONSOR for incorporation and consideration by the CONSULTANT during the design.
- G. The work shall be completed in accordance with the schedule provided during PROJECT initiation but will not be more than twenty four (24) months from the date of the SPONSOR's Notice to Proceed to the CONSULTANT. Failure of the SPONSOR, FAA and/or FDOT or other agency to meet the deliverable

dates for provision of review comments may be justification for obtaining schedule extensions.

H. CONSULTANT will transmit design stage review submissions to the SPONSOR and each submission shall be limited to 3 sets (1 set equals the construction plans for 30% and 90%, and contract documents, drawings, technical specifications, and the Engineer's Report for 100% plans). CONSULTANT will provide draft letters to the SPONSOR for SPONSOR's transmission of these submissions from the SPONSOR to FAA and/or FDOT. Drawings will be either blacklines on laser, inkjet, or thermal bond paper.

I. All permits required as a result of the PROJECT other than mentioned herein shall be obtained by either the SPONSOR or the successful contractor as appropriate prior to the beginning of the construction of the PROJECT.

J. In accordance with the preliminary cost estimates for the PROJECT, the total construction budget for the PROJECT is understood to be between **\$300,000** and **\$400,000**. If at any time during the performance of these Consulting services it is anticipated that this budget appears to be in jeopardy of being overrun (CONSULTANT will be monitoring project costs), the CONSULTANT will notify the SPONSOR immediately.

VII. SPONSOR'S RESPONSIBILITIES

SPONSOR shall do the following in a timely manner so as not to delay the services of CONSULTANT:

A. Designate a person to act as SPONSOR's representative with respect to the services to be rendered under this Supplemental Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define SPONSOR's policies and decisions with respect to the CONSULTANT's services for the PROJECT.

B. Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.

C. Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services, the following:

1. the data prepared by or service of others, including without limitation borings, probings and subsurface explorations, laboratory tests and inspections of pavement samples, materials and equipment;
2. copy of pertinent utility information;
3. property, boundary, easement, right-of-way, topographic and utility surveys;
4. other pertinent documents.

D. Furnish to CONSULTANT, all results, reports, data, studies, generated by other consultants retained by the SPONSOR in association with this project, and as specified under "Additional Services".

VIII. EXHIBITS

The following exhibits are referenced and made a part of this attachment:

EXHIBIT B – PROJECT CONCEPT SKETCH EXHIBIT C – PROFESSIONAL SERVICES COMPENSATION

IX. DELIVERABLES SUMMARY

Payment for the above listed items or tasks will be made after the following deliverables are received or milestones occur:

- A. 30%, 90% design level plans and engineer's report – Print and submit 3 sets of half size (bond blackline or equivalent prints) for the Sponsor to distribute to the FAA/FDOT and others, as necessary. Unlimited PDF versions.
- B. 100% Design Stage Plans and specifications - Print and submit 3 sets of half size (bond blackline or equivalent prints) for the Sponsor to distribute to the FAA/FDOT and others. Unlimited PDF versions.
- C. Record Drawings - Print and submit 3 sets of half size plans (bond blackline or equivalent prints) for the Sponsor to distribute to the FAA/FDOT and others. Unlimited PDF versions.

EXHIBIT B – PROJECT SKETCH

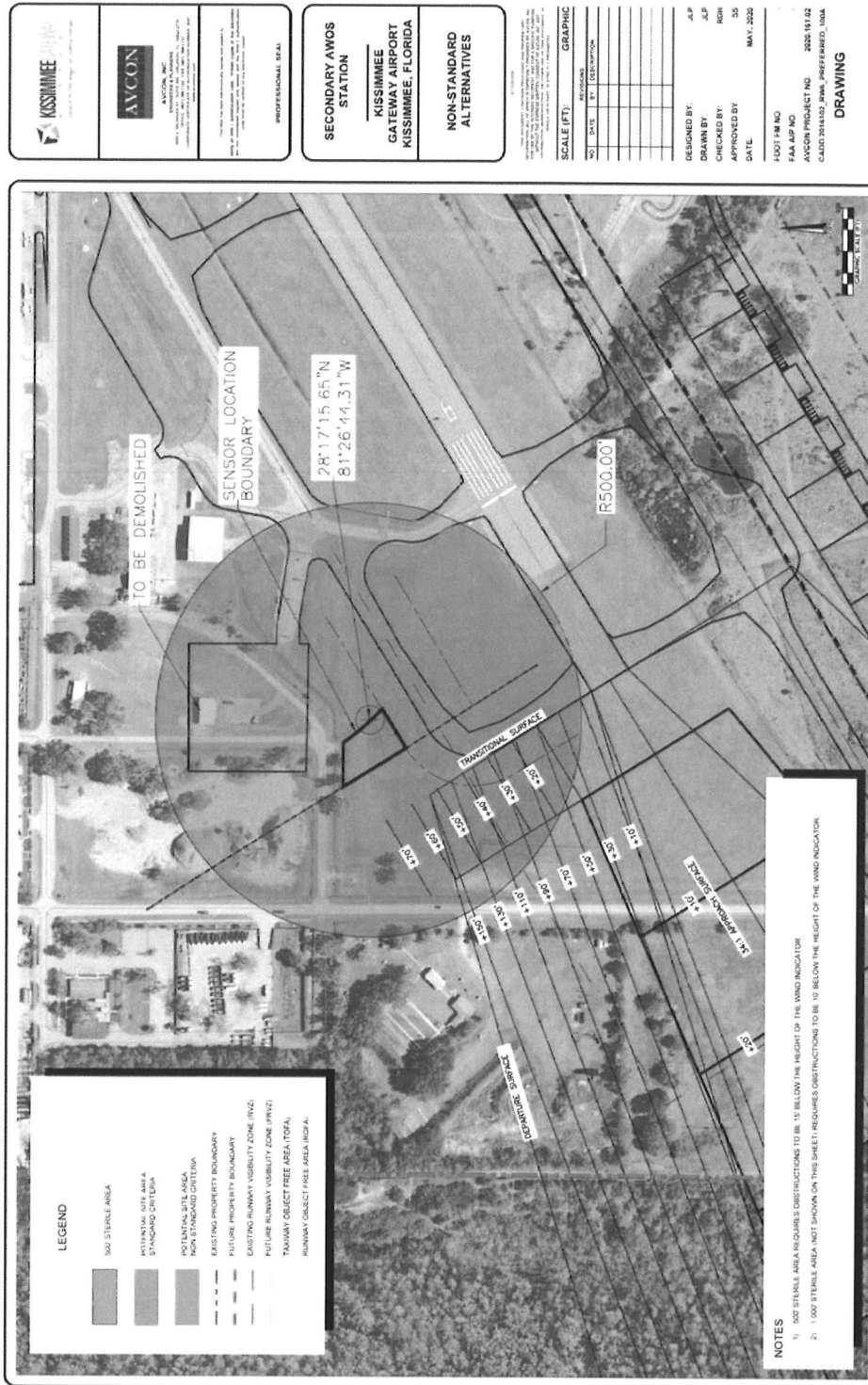


EXHIBIT C**PROFESSIONAL SERVICES COMPENSATION****SECONDARY WEATHER SENSOR ATCT MEL- AWOS A/I- DESIGN/BUILD****CITY OF KISSIMMEE GATEWAY AIRPORT, KISSIMMEE, FLORIDA**

Invoicing shall be made monthly per each phase as they progress to completion on a percent complete basis. The lump sum fees are complete and inclusive of all labor, expenses, overhead costs, general and administrative costs of doing business, direct costs, and profit.

AVCON Sub- Task	Service Description	Compensation	Method
I. Basic Services			
1	A. Design	\$54,500.00	Lump Sum
2	B. Bidding	\$5,000.00	Lump Sum
3	C. Construction Administration	\$13,000.00	Lump Sum
SUB-TOTAL Basic Services		\$72,500.00	
II. Special Services			
1	A. Control & Testing of Construction Materials	\$3,500.00	Lump Sum
2	B. Part-Time Inspection + Expenses	\$37,492.50	Lump Sum
3	C. Record Drawings	\$3,000.00	Lump Sum
SUB-TOTAL Special Services		\$43,992.50	
GRAND TOTAL All Services		\$116,492.50	

Funding Share Level Breakdown		
FDOT	\$93,194.00	80%
City	\$23,298.50	20%
Amendment Total	\$116,492.50	

Part-Time Inspection Fees and Expenses Calculations:Internal Revenue Service M&IE, and mileage 2020

Part time Inspection (90 cal days - 30 work days - 10hrs / day)	\$1,150.00	per day	30	\$34,500.00
Part time Inspection - Mileage - 50 miles/day round trip @ \$0.575/mile	\$28.75	per day	30	\$862.50
Part time Inspection - Tolls	\$5.00	per day	30	\$150.00
Part time Inspection - M&IE	\$66.00	per day	30	\$1,980.00
				\$37,492.50

END OF AMENDMENT

ITEM 7.H**AMENDMENT #11 TO THE PROFESSIONAL SERVICE AGREEMENT WITH AVCON, INC. TO UPDATE THE AIRPORT MASTER PLAN****Request**

Approval of amendment #11 to the professional service agreement between the City of Kissimmee and AVCON, Inc. dated December 19, 2017, to oversee the completion of an update to the Airport master plan.

Explanation

Due to their experience in the aviation and planning field, the Kissimmee Gateway Airport has selected AVCON, Inc. to provide professional services to oversee the completion of an update to the Airport master plan.

The Airport has three aviation consultants under separate master agreements, each with the ability of performing master planning services. The Airport made requests to all three consultants (AVCON, Inc., Amherst Consulting, and Hoyle, Tanner & Associates, Inc.); however, Hoyle, Tanner & Associates, Inc. declined the work and Amherst was in the process of being purchased by Hanson Professional Services, Inc.

AVCON has ample experience working at Kissimmee Gateway Airport since 2008 and understands the Airport's history, environment and vision. In addition, AVCON has recently updated the Florida Department of Transportation's (FDOT) Airport Master Plan Guidebook, illustrating their understanding and close relationship to FDOT.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
47070106-506393	AP21XX	Decrease	\$466,204	\$464,204

Financial Summary:

This project is funded by the Federal Aviation Administration (FAA) at 100% as part of the American Rescue Plan Act funding. The capital project will be established based upon approval of the earlier agenda item to accept the grant from the FAA. There is no City match required for this grant.

Recommendation

Staff recommends Commission approval of amendment #11 to the professional service agreement
City of Kissimmee

between the City of Kissimmee and AVCON, Inc. dated December 19, 2017, to update the Airport master plan.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. Avcon Agreement Amendment No. 11 Airport Master Plan Update



AVCON, INC.
ENGINEERS & PLANNERS
5555 E. Michigan St., Suite 200
Orlando, Florida 32822
Phone: (407) 599-1122
Fax: (407) 599-1133
www.avconinc.com

**AMENDMENT NO. 11
TO THE
PROFESSIONAL SERVICES AGREEMENT**

BETWEEN

**CITY OF KISSIMMEE
KISSIMMEE, FLORIDA
(SPONSOR)**

AND

**AVCON, INC.
ORLANDO, FLORIDA
(CONSULTANT)**

This is an AMENDMENT entered into, effective this _____ day of _____ 20____, by and between the parties above described, WHEREAS, the SPONSOR and CONSULTANT have entered into a Master Consulting Agreement (Professional Services Agreement) dated December 19, 2017, hereinafter referred to as the MASTER AGREEMENT for the purpose of defining the general terms and conditions applicable to the initial and continuing contractual relationship between the parties hereto. Except for what is in this SUPPLEMENTAL AGREEMENT, all covenants, conditions, and obligations of the MASTER AGREEMENT not in conflict herewith shall remain in full force and effect.

NOW THEREFORE, in consideration of these premises and of the satisfactory performance by the CONSULTANT of the services hereinafter provided and for the payments to be made, therefore by the SPONSOR, the CONSULTANT and the SPONSOR do hereby agree to accomplish the work as follows:

SCOPE OF SERVICES:

Provide professional aviation planning services in connection with Attachment A as follows:

AIRPORT MASTER PLAN UPDATE

This project has a budget of \$464,204.00 including the development of the Airport Master Plan Narrative Report, the Airport Layout Plan, and the Airport Exhibit "A" Airport Property Inventory Map.

All Man-hours and Expenses are included in Lump Sum Costs as Attached. Reference is made to the Master Agreement for Professional Consulting Services and Fee Structure between Consultant and Client therein or as attached to this Supplemental Agreement.

The **LUMP SUM COST** of this AMENDMENT is **Four Hundred Sixty-four Thousand Two Hundred Four and no dollars (\$464,204)**, as detailed in Attachment A. The Client agrees to pay **AVCON** for its services based on approved monthly invoices.

The client project representative and **AVCON** shall jointly determine interim production and review milestones.

This AMENDMENT and all referenced attachments shall constitute the complete AMENDMENT for this assignment.

Sponsor Concurrence:

Consultant Concurrence:

CITY OF KISSIMMEE

AVCON, INC.

By: _____

Honorable Olga Gonzalez

Mayor - Commissioner

By: _____



Authorized Signature

Sandeep Singh, P.E.

President

Date: _____

Date: 5-20-21

ATTEST:

ATTEST.



EXHIBIT A

Exhibit A AIRPORT MASTER PLAN UPDATE SCOPE OF SERVICES KISSIMMEE GATEWAY AIRPORT KISSIMMEE, FLORIDA

Project Background

Introduction

This project involves preparation of an Airport Master Plan Update for Kissimmee Gateway Airport (ISM) in accordance with the requirements of the Federal Aviation Administration (FAA), the Florida Department of Transportation (FDOT) and the needs of the City of Kissimmee, Florida, the Airport sponsor. The services described in this scope of work will be conducted by AVCON, Inc. (AVCON) and their sub-consultants (the AVCON Team). Specifically, the Master Plan Update study will be conducted in accordance with FAA Advisory Circulars (AC) 150/5070-6B, *Airport Master Plans*; FAA AC 150/5325-4B, *Runway Length Analysis*; FAA AC 150/5300-13A, *Airport Design*; FAA ARP Standard Operating Procedure No. 2, *ALP Review Checklist*; FAA ARP Standard Operating Procedure No. 3, *Exhibit 'A' Review Checklist*; as well as the FDOT *Guidebook for Airport Master Planning (2020-2021)* and the FDOT *Florida Aviation Project Handbook 2020-2021*.

This update will entail a comprehensive analysis of current Airport facilities, determination of trends and activities affecting the Airport, existing and future Airport land use, pavement condition, as well as evaluation of runway length, strength, and navigational requirements. The Master Plan Update will result in the preparation of an analysis of airside and landside development alternatives, the preparation of a potential funding plan, and the update of the Airport Layout Plan set, as well as the development of an Exhibit "A" Airport property Inventory Map to guide future development on the Airport.

Kissimmee Gateway Airport is a general aviation (GA) airport located in Kissimmee, FL (City), which is owned and operated by the City. The Airport is located approximately two miles west of downtown Kissimmee, Florida and is served by two runways: Runway 15/33, which has dimensions of 6,100 feet in length by 100 feet wide, and Runway 6/24, which has dimensions of 5,001 in length by 100 feet wide .

Both runways are constructed of asphalt. Runway 15/33 pavement is reported to be in excellent condition and Runway 6/24 pavement is reported to be in good condition. All runway ends are equipped with 4-light precision approach path indicator lights (PAPIs). Runway 15 has a published ILS approach. Runways 6, 15, and 33 each have published non-precision approaches. There are no published instrument procedures for Runway 24.

Kissimmee Gateway Airport
Master Plan Update
Scope of Work

The Airport has a contract Air Traffic Control Tower, which is operational 15 hours a day. It is equipped with fuel storage facilities capable of dispensing 100LL, and Jet-A aviation fuels through one of two Fixed Base Operator's (FBO) on the Airport.

The Airport supports a variety of GA aeronautical operations and is home to approximately 195 based aircraft. It serves both single and multi-engine aircraft operations. Annual operations according to the FAA's Terminal Area Forecast (TAF) as of January 2020 were 102,532 annual operations in FY 2018 divided 42 percent local general aviation traffic and 54 percent itinerant general aviation traffic. About four percent of the traffic was air taxi and less than one percent of the operations were reported as military.

Project Objective/Key Issues

The overall goal of a Master Plan Update is to provide guidelines for future Airport development that will satisfy aviation demand in a cost-effective, feasible manner while considering aviation, environmental, and socioeconomic issues of the community. Thus, an Airport Master Plan Update presents both short- and long-term development and graphically displays proposed growth in the FAA/FDOT-required Airport Layout Plan set while the narrative report provides the data, justification, and logic associated with the proposed changes. Airport objectives will be based upon an initial evaluation of the Airport and its surrounding environment and will also include meetings with the Airport staff and local officials (i.e. the Mayor, the Board of City Commissioners, and local Economic Development officials as deemed appropriate by the Airport Director of Aviation). However, the Airport Master Plan Update objectives should be flexible to assure an unbiased and objective basis for the final project.

Master planning activities will provide a capital improvement program for future development of the Airport, as well as an overview of land use compatibility issues in the Airport environs as prescribed in Florida Statutes (F.S.). In addition, this planning effort will result in the development of an Airport Layout Plan drawing set, which meets both FAA and FDOT criteria. The Master Plan Update will provide the Airport and City with a comprehensive overview of the Airport's needs during the next twenty years, and will include the identification, location, timing, and costs of proposed development as necessary to meet future demand projections or to increase safety.

Some of the specific issues to be evaluated as part of this master plan process are delineated below. Specific tasks were incorporated into this scope of services to address these considerations. This listing is not intended to be an exhaustive recitation of items that require consideration within the Master Plan Update but rather identifies major concerns or issues that should be addressed in support of the City's long-term airport goals. Some specific goals and objectives to be considered in no specific order include:

1. Assess the operational efficiency, effectiveness, and safety of the Airport, including the

existing Runway Safety Areas (RSA).

2. Evaluate the Airport facility layout for conformance with FAA AC 150/5300-13A, *Airport Design*.
3. Evaluate the known obstructions to the airspace of the Airport to determine the current impact to the Airport. An Airports Geographic Information Systems (AGIS) survey will be performed for this study in according to FAA AC 150/5300-18B, *General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards*.
4. Evaluate the Airport's existing and ultimate runway length requirements to identify improvements necessary to meet demand and/or entice additional traffic to the Airport.
5. Evaluate existing and future land acquisition and utilization to ensure "best use".
6. Assess and evaluate potential development options in relation to forecast demand, land utilization, and compatibility with long-term Airport and City of Kissimmee development.
7. Evaluate existing Airport infrastructure and make recommendations for future development.
8. Assess any short-term actions and recommendations to ensure that they do not preclude long-term planning objectives.
9. Assess the needs of current tenants and requirements necessary to attract new tenants and/or expand their facilities.
10. Evaluate whether current City Land Use Overlay Zones are consistent with Federal Aviation Regulations, as well as Florida Statute 333, *Airport Zoning*, to prohibit incompatible land use encroachment.
11. Identify existing and alternative funding sources for Airport infrastructure development.
12. Identify areas of environmental concern and provide mitigation options for future development.
13. Evaluate long-term development options for general aviation and Airport support facilities, including the development of the now closed golf course on Airport property.
14. Evaluate the airfield development options that address critical aircraft and runway length requirements, runway safety area standards, and future airfield capacity.

As noted, the preceding list is not intended to be an exhaustive list of issues, but it presents an overview of the number of key considerations that need to be addressed in this master plan update.

Technical References

A variety of technical references are commonly used during the development of a master plan report. The following list denotes some of the more commonly used reference materials:

- FAA AC 150/5300-6B, *Airport Master Plans*
- FAA AC 150/5300-13A, *Airport Design*
- FAA AC 150/5325-4B, *Runway Length Requirements for Airport Design*
- FAA AC 150/5060-5, *Airport Capacity and Delay*
- FAA AC 150/5300-18B, *General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards.*
- National Environmental Policy Act (NEPA), *Implementing Instructions for Airport Actions Order 5050.4B*
- Environmental Impacts: Policies and Procedures Order 1050.1E
- FAA AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near an Airport*
- FAA Standard Operating Procedure 2.00, *FAA Review and Approval of Airport Layout Plans (ALPs)*
- FAA Standard Operating Procedure 3.00, *FAA Review of Exhibit "A" Airport Property Inventory Maps*
- FAA Standard Operating Procedure 8.00, *Standard Operating Procedure for Runway Safety Area Determination.*
- FAA AC 150/5020-1, *Noise Control and Compatibility Planning for Airports*
- The FAA Memo *Interim Guidance of Land Uses Within a Runway Protection Zone*, dates 27 September 2012.
- The FAA Memo *Interim Memo Reminding FAA Personnel and Airport Sponsors for Protecting Approach and Departure Surfaces in Accordance with FAA AC 150/5300-13A, Airport Design and Order 8260.3, U.S. Standards for Terminal Instrument Procedures.*

- Florida Statutes:
 - Amended Chapter 163 F.S., *Intergovernmental Programs*
 - Chapter 330 F.S., *Regulation of Aircraft, Pilots, and Airports*
 - Chapter 332 F.S., *Airports and Other Navigation Facilities*
 - Chapter 333 F.S., *Airport Zoning*
 - Chapter 339 F.S., *Transportation Finance and Planning*
 - Chapter 380 F.S., *Land and Water Management*
 - Chapter 2009-167, *Airline Safety and Wildlife Protection Act of Florida*
- Florida Department of Transportation Guidelines:
 - *Guidebook for Airport Master Planning (2020-2021)*
 - *Florida Strategic Intermodal System Plan*
 - *Florida Aviation System Plan*
 - *Florida General Aviation Airport Business Plan Guidebook*
 - *Florida Aviation Project Handbook*
- Florida Administrative Codes:
 - Chapter 14-60, *Airport Licensing, Registration, & Airspace Protection*

All master plans submitted to FDOT must follow Florida Statutes Chapter 330, *Regulation of Aircraft, Pilots, and Airports* (Chapter 330 F.S.) and the Florida Administrative Code Rule 14-60, *Airport Licensing, Registration, and Airspace Protection* (Rule 14-60). Both concern the registration and licensing of public, private, and temporary airports in the State of Florida, and Rule 14-60 also determines the Minimum Standards for Florida licensed airports.

Detailed information about the Master Plan Update project approach is outlined in the following tasks and sub-tasks.

Task 1 Project Initiation and Scoping

Task 1 Project Initiation and Scoping

The project initiation task includes the development and revision of the scope and associate fee (see Exhibit A) and consists of necessary meeting participation along with other coordination relevant to the scoping effort.

A scope of work and man-hour estimate for the project is in the process of being developed in accordance with the current version of FAA AC 150/5070-6B, *Airport Master Plans*, and the FDOT *Guidebook to Airport Master Planning, 2020-2021*. This scope will identify major tasks, as well as delineate general elements of work to be conducted under each of the project activities. The man-hour estimate will define the estimated labor hours and associated costs that may include, but not be limited to travel, presentation materials, printing, and graphics,

environmental review, socio-economic data, and coordination costs for the scoping process, which is anticipated to include a coordination meeting with the representatives of the Airport, the FDOT, and the FAA Orlando Airports District Office (ADO). This task will also involve the development of a project timeline for each of the tasks delineated in the scope. It is important to note that a notice to proceed cannot be issued until written approval of this scope and fee is received from both FAA and FDOT.

Task 2 Inventory of Existing Conditions

Task 2.1 Review and Evaluate Existing Documents

Existing documents including previous planning studies, design drawings, inspection reports, airfield pavement data, airfield pavement evaluation reports, leases, obstruction charts, approach plates, and as-built drawings of structures on the Airport will be obtained and analyzed for their content. Documents to be obtained and reviewed include, but may not be limited to:

- Previous Airport Master Plan/Noise Compatibility Studies
- Current Airport Layout Plan Drawings (digital required)
- Current GIS/Mapping Information (provided by the City or County)
- *FAA Terminal Area Forecasts*
- Florida Aviation System Plan
- FAA 5010 Form (Airport Master Records)
- Area Socioeconomic Data
- NOAA Obstruction Chart
- Area Land Use and Zoning Information
- Airfield Pavement Condition Index (PCI) Study
- Historic Fuel Capacity and Demand Data
- Current Capital Improvement Program
- Airport Property Inventory Map
- Osceola County Property Appraisal Information for Kissimmee Gateway Airport parcels
- Osceola County Clerk of Court records on Airport property and easements
- All previous and recent NEPA documentation, permits and any other pertinent environmental documentation

Task 2.2 Airport Role and Physical Facilities Inventory

As part of the Airport inventory, the role of the Airport will be defined in terms of services it provides the community and its current classification in the FAA's National Plan of Integrated Airport Systems (NPIAS) and Florida Aviation System Plan (FASP). This will be followed by a physical facilities inventory, which will consist of an on-site review of existing Airport facilities with attention being paid to their size, condition, use, configuration, and adequacy of

these facilities under current operating conditions. This information will be used to evaluate the effectiveness of the individual facility, and any interrelationships between developed uses on the airfield and how they may be affected by changes designed to improve Airport operations and/or capacity. Additionally, the evaluation of existing facilities will serve as the basis for identifying any facilities that need immediate attention, if any. Representative facilities might include:

- Land Holdings
- Airfield Facilities
- Runway Safety Area Evaluation
- Airport Terminal
- Aircraft Maintenance
- General Aviation Facilities
- Landside Facilities
- Support Facilities
- Airport Access
- Weather Facilities
- Tenant Leaseholds

Task 2.3 Airspace Environment/Obstructions

Air traffic control facilities, including the Airport's Air Traffic Control Tower (ATCT) involved in and/or responsible for handling traffic into and out of the Airport will be identified. Procedures as they relate to the Airport will be reviewed. An inventory of the area airspace will be undertaken with emphasis on the identification of airways, restricted areas, intersections, and obstructions in the Airport vicinity. This task will identify operational limitations due to traffic interactions with other airports, military operating areas (MOAs) and restricted areas (RAs), if applicable. It will also address reserved airspace, missed approach courses, noise abatement procedures, airfield facilities and design, existing or programmed navigational aids (NAVAIDs), and topography and obstructions at, or in the vicinity of, the Airport. This data will be generated from existing sources of information, as well as an interview with the ATCT personnel. It will also include a list of public-use airports in the surrounding area, approximately a fifty-mile radius, that details items of their infrastructure and services.

Task 2.4 Airport Director Interview

As part of the data gathering process, the Airport Director will be interviewed. The interview will solicit information such as a description of current facilities; levels of activity including fuel data if applicable, conducted from the Airport; perceived Airport needs; future plans; type of aircraft used and anticipated; and anticipated fleet additions and changes in order to identify the existing and potential critical aircrafts. A listing of Airport tenants, including the three Fixed Base Operators (FBO) will be used for follow-up discussions on an as-needed basis

throughout the master plan process.

Task 2.5 Vicinity Land Use/Existing Land Use Controls

An evaluation and review will be conducted of the existing land use mapping, Airport ownership (i.e. fee simple or easement), existing aerial photography, comprehensive plans, zoning controls, and other documentation pertaining to current and future land use in the vicinity of the Airport. Existing land development code and zoning overlay districts will be reviewed to determine locations for potential incompatible land uses. Also, subdivision regulations, building codes, and other documentation pertaining to land use management in the vicinity of the Airport will be reviewed. Attention will be paid to those requirements including height restrictions and building/zoning codes that could affect the future development of the Airport or adjacent parcels of land.

Task 2.6 Environmental Review

The AVCON Team will conduct desktop research of available Geographic Information Systems (GIS) data and literature. This will document existing environmental conditions to assist in the evaluation of Airport development alternatives and identify the agencies that have jurisdiction over the environmental categories listed FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, that apply to the Airport. Sections will, at a minimum, include the following.

- Air Quality
- Biological Resources
- Compatible Land Use
- Department of Transportation (DOT) Section 4(f)
- Historical, Architectural, Archeological, and Cultural Resources
- Noise
- Light Emissions and Visual Impacts
- Wetlands
- Floodplains
- Wild and Scenic Rivers

Meetings and Coordination: Up to two project meetings will be conducted during the development of the environmental review. These meetings are likely to be teleconferences due to the current pandemic and are anticipated to include:

1. Kick-off Meeting – to discuss project goals, schedule, and collect existing data.
2. Draft Environmental Review Report Meeting – this meeting will be held to discuss comments of the Airport to the AVCON Team.

It is assumed that the Airport will provide all recent and previous environmental and NEPA documents, permit applications, and any other pertinent documentation fifteen (15) days from receipt of the Notice to Proceed (NTP) as part of the Inventory Task.

A review of natural resources including wetlands, streams, biotic communities, protected species, floodplains, and land use will be conducted to assess potential environmental impacts and to assist in the development of alternatives. The environmental inventory will use existing information such as maps, prior environmental documents, and the internet to provide an overview of sensitive environmental resources within and adjacent to the Airport. The FAA environmental checklist will also be used as a guide for identifying potential environmental constraints on Airport development.

Task 2.7 AGIS Survey and Coordination

The ALP mapping and an aeronautical obstruction survey will be performed in compliance with AGIS policies and will include an airport airspace analysis for vertically guided operations for Runways 6/24 and 15/33 and development of an Airport Layout Plan (ALP.) The Advisory Circulars identified below detail the data collection requirements and accuracies for the project and the verification process by the Federal Aviation Administration (FAA) and the National Geodetic Survey (NGS).

- AC 150/5300-16B "General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey."
- AC 150/5300-17C "Standards for Using Remote Sensing Technologies in Airport Surveys."
- AC 150/5300-18B "General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GPS) Standards."

The purpose of this task is to accomplish FAA Airport Airspace Analysis Survey for all surfaces defined in FAA Advisory Circular 150/5300 - 18B: Section 2.7.1.1 Runways with vertical guidance. This is inclusive of 2.7.1.1.1 through 2.7.1.1.7.

For this project, the AVCON Team will acquire new vertical stereo aerial photography at a nominal scale of 1"=1,905' for obstruction surface areas and 1"=508' along the runway centerline and of the Airport property. The aerial photography will cover all of the VG Airspace Analysis surfaces using a Zeiss Z/I digital mapping camera during leaf-on conditions.

From the 1"=1,905' aerial photography, the following will be produced:

- Limited landmark feature planimetric mapping
- Color digital orthophotos with a 1.0' pixel resolution (VG)

- Identification and mapping of obstruction obstacles for all the VG surfaces

From the 1" = 508' aerial photography, the following will be produced:

- Identification and mapping of obstruction obstacles for the VGRPS, VGPCS & VGPS surfaces

The project has been designed to conform to the National Map Accuracy Standards for planimetric and topographic feature collection and twelve- inch orthophoto production. In addition, the photogrammetric mapping is ensured to meet all FAA and NGS standards. Reasonable care will be exercised, and the mapping will conform to the standards of practice ordinarily used by the photogrammetric profession.

The project area encompasses all of Kissimmee Gateway Airport inclusive of the obstruction surfaces as defined in AC 150/5300-18B, as well as the defined Airport property.

The aerial photography will be completed with ABGPS control, which will be used for the base control for the geo-referencing of the aerial imagery. The AVCON Team will process the ABGPS data using COR stations and reference it to the project control datums:

Horizontal: North American Datum of 1983/2011 (NAD 83(2011)), in FL State Plane Coordinate System, East Zone in US survey feet.

Vertical: North American Vertical Datum of 1988 (NAVD 88)

The AVCON Team will perform or subcontract the ground survey and be responsible for all tasks, including:

- Geodetic control validation of the existing Airport PACS and SACS stations or establish temporary Airport control according to the guidelines established in AC 150/5300-16B
- Obtain all necessary ground control photo identifiable control check points required to validate the ABGPS control.
- Control of all the Airport runway end positions
- Collection of vertical profiles for all runways
- Collection of the position, elevation, and where required the appropriate navigational aid perpendicular point of all electronic and visual navigational aids (NAVAIDS) located on the Airport and associated with any current instrument approach servicing the airport
- Control for any obstruction obstacles or Airport planimetric features that cannot be collected by photogrammetric methods
- Complete map checks for feature attribute data and update the final map file attribution

- Preparation of a survey and quality control plan, imagery plan, and final project report as required for submission to the FAA AGIS online database.
- All other tasks, not specifically listed above, as outlined in FAA AC-18B, Table 2-1 "Survey Requirements Matrix for Airport Obstruction Charts."

The AVCON Team will use the control solution and scans of the aerial negatives to generate a Digital Elevation Model (DEM) for the VG surfaces. The aerial scans will be processed into color digital orthophotos using the DEM to rectify the images. Orthophotos for the entire project area will be developed with a 1.0' pixel resolution and be delivered in a GeoTIFF file format via external hard drives.

The AVCON Team will field collect the required attribution needed to upload the planimetric and topographic data to AGIS.

For the VGA Obstructions Surfaces production personnel will satisfy the following requirements of the AC 150/5300-18B:

- 2.7.1.2 Analysis of Runways 3/21 and 13/31 with Vertically Guided Operations
(Surfaces include the VGRPS, VGPCS, VGAS, VGPS, VGATS, VGHS and VGCS)

The specific types and quantities of obstructions for each surface are outlined and clearly defined for the surface in each circular section. Any obstructions that meet the requirement of the circular, but are of a nature that elevations at the highest point of the obstruction are virtually impossible to read through photogrammetric methods (cell tower, electrical tower, etc.), will be identified and relayed to the surveyor to initiate field surveyed elevations for the obstruction.

The obstruction deliveries will include the off-airport landmark planimetric mapping and the Airport limited planimetric mapping and attribution data.

The final data will be delivered in a format to work with ESRI shape files. Feature attributes will be built into a spreadsheet (with key object identifiers). Delivery formats can be discussed and adjusted as the project continues to develop.

A mutually agreeable schedule for the project will be finalized after FAA Control Plan approvals. A reasonable effort will be made to maintain the agreed-upon schedule. However, should the project be interrupted by technical problems beyond the AVCON Team's control, including control deficiencies or map file re-deliveries rescheduling may become necessary.

All data collected will be submitted along with associated required deliverables in the formats specified in the appropriate advisory circulars to the FAA Office of Airports, Airports Surveying-GIS Program. All data submissions to the FAA will be through the program's web site at <http://airports-gis.faa.gov>.

The AC 150/5300-17C project data deliveries that will not be submitted through the web site will be delivered on external hard drives or DVDs.

The 18B deliverables that will be uploaded to the AGIS website include:

- Statement of Work, Imagery Plan and Survey and Quality Control Plan
- Image Delivery
- Digital limited landmark detail outside the airport
- Color digital orthophotos with a 1.0' pixel resolution (GeoTIFF format)
- Obstruction survey data (that covers VG surfaces)
- 100 scale planimetric features of Airport property
- 2-foot contours of the Airport property
- Surveyed centerline profile on VG runways
- Photogrammetrically derived and surveyed attributes in defined format
- NAVAID data
- FGDC compliant metadata
- Final Report

Other than the 18B delivery, the following items will be delivered to the Airport:

- Color digital orthophotos with a 1.0' pixel resolution in GeoTIFF (project area)
- 2 color enlargements (30"x40") covering the Airport and surrounding area (mounted/laminated/framed)
- 100 scale planimetric features of Airport property
- 2-foot contours of the Airport property

All digital files will be delivered on external hard drive or CD/DVD.

As part of the AGIS Survey, aerial and control support survey will be performed. The AVCON Team will prepare a Control Survey and provide ground survey support for the AGIS aerial survey of the Kissimmee Gateway Airport. Control Survey tasks will include:

- Establish and Survey Temporary Airport Control Stations. Stations will be surveyed as 2 4-hour static survey sessions and submitted to OPUS for solution.
- Survey 32 Low Level, 9 High Level, and 5 Check photo control points. Low- and High-Level control points will be surveyed using redundant RTK for 3-minute sessions. Check control points will be surveyed for approximately 30 minutes and submitted for an OPUS solution. All control points include photography as required for the final submittal.

- Survey airport control stations, including photography as required for submittal:
 - Centerline ends and displaced thresholds of both runways, monumented with nails and washers stamped with the Surveyor's stamp and the date of survey.
 - 4 PAPI locations
 - REIL lights
 - 2 beacons
- Runway centerline profiles – RTK profiles of runways with point spacing not to exceed 50'

Task 3 Aviation Activity Forecasts

The Aviation Activity Forecasts task includes the review, sorting, documentation, and development of future forecasts of based aircraft and operational activity. In addition to forecast development, socioeconomic and other factors/trends, which have historically or that may impact future growth will be discussed in detail. Once accepted by the Airport, this chapter will be submitted to the FAA Orlando ADO and the FDOT for their review and approval. Approval from both agencies of this task is required prior to completion of subsequent tasks of the master plan process.

Task 3.1 Historical and Current Air Traffic Activity

Data on historical and current air traffic activity at the Airport will be assembled and organized. Information concerning the level of activity associated with general aviation operations by local and itinerant categories, training operations including touch and go operations, fuel sales (in gallons), and based aircraft by aircraft type will be sought. Information concerning peak hourly operations, daily, monthly, and annual activity will be based upon historical data as well as information obtained from Airport records, Airport users, the FBOs, FDOT, and sources at the FAA. Existing records of general aviation activity at the Airport to be compiled include:

- Annual operations (local and transient)
- Operations by category of aircraft (single engine, multi-engine, rotorcraft, etc.)
- Number of based aircraft by type (single-engine, multi-engine, etc.)
- Existing and Future Critical Aircraft and associated operations
- Peak month, day, and hour operational activity
- Fleet Mix

Task 3.2 Factors and Opportunities Affecting Activity Levels

This task will analyze potential changes in business and economic patterns, or in possible based operators at the Airport to determine any potentially significant factors that could impact the level or type of activity at the Airport.

Task 3.3 General Aviation Forecasts

The Airport Master Plan Update will develop aviation activity forecasts based upon socio-economic projections, past trends, and past federal and state and local forecasts in addition to existing activity levels. This analysis will result in either the re-validation of a past forecast or the establishment of a newer forecasts for these activities. Forecasts of general aviation activity will be prepared for the 5-, 10-, 15-, and 20-year planning horizons and will provide individual projections of the following:

- Annual General Aviation Operations (local vs. Itinerant)
- Total Annual Aircraft Operations
- Annual Operational Fleet Mix
- Based Aircraft Totals
- Based Aircraft Fleet Mix

Task 3.4 Design Aircraft Identification

Using information generated through the Airport Director and ATCT interviews, as well as historic data, the existing and future critical aircraft or design aircraft will be determined. The critical aircraft represents either a single aircraft or group of aircraft with similar characteristics that equals or exceeds 500 annual operations. Further, using forecast operations and fleet mix information from Task 3, the future critical aircraft or family of aircraft will be determined. This information will be used to determine existing and future airfield facility requirements and will dictate the sizing and separation of taxiways/taxilanes, runway length and pavement strength criteria.

Task 3.5 Aviation Activity Peaking Analysis

A key factor in determining the demand for future facilities relies on an analysis of the Airport's operational peaking characteristics. This relates to those times of the day, month, and/or year where the activity level of aircraft operations or the number of pilots/GA passengers exceeds average values. These peaks are key elements in determining the sizing of airside and landside facilities. The items to be assessed will include:

- Average and peak month for operations and GA pilots/passengers,
- Average-day pilots/passengers and operations,
- Average-day peak month pilots/passengers and operations
- Peak hour operations and pilots/passengers

After the Airport has reviewed and concurred with the developed forecasts, they will be forwarded to the FAA Orlando ADO and FDOT for review and approval. Once the forecasts have been approved, all Airport based aircraft will be entered/submitted/updated in the www.basedaircraft.com website, if not already complete. Once the forecasts have been approved, Task 4 will be initiated.

Task 4 Capacity Assessment/Facility Requirements

This task includes the calculation and capacity determination of the Airport's current runway system. After the Airport's capacity has been established, it is compared to the FAA approved forecasts of activity to identify improvements needed to accommodate anticipated demand throughout the twenty-year planning period. Similarly, the quantity and sizing of facilities and deficits are compared to the approved forecasts to identify improvements that will be necessary to accommodate any expected increases in based aircraft and operational activity. Furthermore, both airside and landside facilities are compared to FAA standards for compliance and non-standard facilities are documented for future discussion and resolution in subsequent chapters.

Task 4.1 Airfield Capacity

The FAA's methodology for assessing airfield capacity and delay, as delineated in FAA AC 150/5060-5, *Airport Capacity and Delay*, will be used to assess airfield capacity. Based on the forecast developed under Task 3, a brief capacity assessment will be performed to determine existing and future airfield capacity related to existing and anticipated changes in operations and fleet mix as defined within the aviation activity forecasts. The result of the capacity assessment will be expressed in terms of hourly and annual service volume of the airfield. Additionally, the hourly capacity at the Airport will be identified for VFR and IFR conditions. This assessment will evaluate the existing airfield configuration in terms of its adequacy to meet the forecast design group and approach categories as identified within the FAA approved Aviation Activity Forecasts.

Task 4.2 Runway Length Analysis

To determine the runway length requirements at the Airport, both takeoff and landing runway length requirements will be established as prescribed in FAA AC 150/5325-4B, *Runway Length Requirements for Airport Design*. To determine the runway length necessary to accommodate the Critical Design Aircraft, the following three subtasks will be completed as follows:

- Coordination and Data Collection: Fleet mix and frequency data will be collected from available sources including FAA Operational Activity Databases (i.e. TFMSC, ATADS, etc.).
- Data Analysis: Research conducted into historic, current, and forecast aircraft activity will be used to identify the types of aircraft and associated operational activity that exist or that is expected to exist at the Airport within the next five years. The fleet mix and frequency established earlier will be projected outward utilizing growth rates established from the selected and approved forecast as developed in Task 3. Based upon the results of the analyzed data, a critical aircraft activity forecast will be produced that reflects recent and anticipated short term activity trends.
- Runway Length Analysis: Applying the previous critical aircraft and operational data to

the methodology outlined in FAA AC 150/5325-4B will result in recommended takeoff and landing length requirements. This data will be used to support a recommended overall runway length at the Airport.

Task 4.3 Airfield Facility Requirements

Using the results of the airfield capacity and delay analysis, as well as other relevant information and airfield planning criteria, a preliminary listing of airfield facility requirements necessary to meet projected levels of demand for the 5-, 10-, 15-, and 20-year time frames will be determined and prepared. These facility requirements will be based upon FAA airport planning criteria, and the FAA/FDOT approved Aviation Activity Forecasts for the Airport, as well as the knowledge and expertise of the AVCON Team, and the Airport staff. Airfield facility needs to be assessed include:

- Runways, taxiways/taxilanes, and aprons (length, width, size and/or strength)
- Lighting and marking
- Aircraft parking aprons (size, strength, and utilization)
- Navigational aids (electronic and visual)
- Security requirements

Airfield facility needs will be identified in terms of linear feet, strength, etc. and will be compared to existing facilities to identify excess or deficient facility capacity or capability. The output of the aviation forecasts will be accounted for in the analysis of airfield facility needs, particularly as it relates to runway length and dimensional layout requirements, taxiway development needs and overall airfield lighting needs. Where appropriate, the airfield facilities will be linked to activity demand thresholds or triggers as a means of determining the point at which demand is sufficient to warrant the improvement.

Task 4.4 Runway Safety Area Evaluation and Determination

Based on the evaluation of the Runway Safety Areas (RSA) performed in Task 2.2 further study the RSA's based on the critical aircraft determined in Task 3.4 and the FAA S.O.P 8.00, *Standard Operating Procedure for Runway Safety Area Determination*. Determine and note any deficiencies, especially whether the RSAs meet the current standards contained in FAA AC 150/5300-13, *Airport Design*. If any deficiencies are noted, alternatives for these will be addressed in Task 5.2.

Task 4.4 General Aviation Facilities

Using the results of previous tasks and accepted planning criteria, the Master Plan Update will determine and prepare a preliminary listing of general aviation facility requirements necessary to meet both current and projected levels of demand for the 5-, 10-, 15-, and 20-year planning horizons. General aviation facility requirements to be assessed include:

- Aircraft apron and parking area
- Aircraft storage facilities
 - T-hangars
 - Conventional hangars
 - Tie-down areas
- Terminal facilities
- Access and vehicle parking areas

Facility requirements will be expressed in terms of gross area, linear measurement, or other basic units, and will be compared to existing facilities to identify excess or deficient capacity by facility on the Airport. This assessment will quantify future development items needed to maintain an adequate level of service, function, and operation at the Airport, and will utilize activity or demand level triggers as a means of identifying when improvements are necessary.

Task 4.5 FBO General Aviation Terminal Facilities

The Airport terminal was recently completed and fulfills the needs of the administration of the Airport. Based on input from the forecasts, general aviation terminal facility spatial requirements at the Airport for the two Fixed Base Operators (FBOs) will be reviewed. The facilities necessary to support existing and forecast general aviation demand (both fleet and passengers) will be identified. This task will provide general estimates for the individual components of the multi-use terminals and will be used to determine terminal requirements and supporting airside and landside areas throughout the planning period based on the FAA/FDOT approved aviation activity forecasts.

Task 4.6 Airport Support Facilities

Using information provided by existing studies, and aviation planning criteria established under preceding tasks, a set of facility requirements addressing the Airport facilities necessary to support the airfield, the terminal area, general aviation areas and their related activity will be developed. Requirements for facilities such as aircraft fueling, airport maintenance, ground access, and general vehicle parking will be developed under this task, as needed.

Task 4.7 Land Area and Landside Requirements

During this task, the AVCON Team will consider the highest and best use of Airport property needed to accommodate the future development of the Airport. An overview of adjacent parcels will also be undertaken to identify property that might be required for inclusion into the Airport property envelope, should some aspect of the Master Plan Update require additional land area for development or to meet FAA design criteria.

The purpose of this task is to support the Airport's efforts to maximize sustainable development that will generate revenue for Airport activities. As a result, the existing characteristics of the Airport's landside facilities will be reviewed and analyzed, including:

-
- Land uses
 - Development restrictions related to the transfer or disposition of property, current leases, or adjacency to Airport facilities
 - General development areas as identified in the previous Master Plan Update
 - Overall site circulation and external connections
 - Ownership of adjacent properties
 - On-site parking
 - Infrastructure capacity

This task will focus on verifying baseline data and identifying any recent landside improvement projects since the previous Master Plan Update. It is anticipated that this task will include at least one interview with the Economic Development Director. The AVCON Team will also assess any new data on the Airport property.

Task 4.8 Sustainability Management Plan

The AVCON Team will develop a Sustainability Management Plan for the Airport in accordance with the FAA's Memorandum, *Airport Sustainable Master Plan Pilot Program* (2010), the *Report on Sustainable Master Plan Program and Lessons Learned* (2012), the Airport Cooperative Research Program's (ACRP) *Guidebook of Practice for Improving Environmental Performance at Small Airports* (2011), and the FDOT's *Airport Sustainability Handbook*. The AVCON Team will work jointly with the Airport to prepare the Sustainability Management Plan and it will include the following information:

1. The AVCON Team and the Airport will develop a Mission Statement
2. Define the Sustainability Categories for the Airport. Examples include but are not limited to energy reduction, construction methods, waste management and recycling, water quality, and conservation, etc.
3. The AVCON Team and the Airport will determine the stakeholder's participation.
4. Conduct a baseline inventory at the Airport to evaluate the elected Sustainability Categories.
5. Identify sustainable projects, goals, and objectives

The Sustainability Management Plan will require commitment from City and Airport resources (personnel, equipment, supplies, and money) needed to implement the Sustainability Management Plan. Therefore, it is the City and the Airport's responsibility to approve any

Sustainability Management Plan recommendations.

Up to three (3) project meetings will be conducted during the development of the Sustainability Management Plan. It is anticipated that these will be teleconference meetings due to the pandemic. The anticipated meetings include:

1. Kick-off Meeting – will be conducted to discuss project goals, schedule, and collect existing data.
2. Baseline Inventory Meeting – will be conducted to discuss the results of the baseline inventory and establish sustainability initiatives for each category
3. Draft Sustainability Management Plan Report Meeting – will be held to discuss comments from the Airport.

The AVCON Team will prepare meeting agendas, attendance sheets, and appropriate support materials such as maps and a draft Sustainability Management Plan, and meeting minutes.

The AVCON Team will submit an electronic draft Sustainability Management Plan to the Airport for review and comment. It is assumed that the Airport and City will take no longer than thirty (30) days to provide comments. After the Draft Sustainability Management Plan Report Meeting, the AVCON Team will address all comments within ten (10) business days and submit a final Sustainability Management Plan to the City and Airport in both electronic and hard copies.

Task 4.9 Airport Recycling, Reuse, and Waste Reduction Plan

The AVCON Team will work in cooperation with the City and the Airport to develop an Airport Recycling, Reuse, and Waste Reduction (ARRWR) Plan in accordance with FAA's Guidance on *Airport Recycling, Reuse, and Waste Reduction Plans* (2014) and Section 133 of the FAA Modernization and Reform Act of 2012 (FMRA). The ARRWR Plan will include the following information:

1. Facility Description and Background
2. Preliminary Waste Audit
3. Review and Recycling Feasibility
4. Operation and Maintenance Requirements
5. Review of Waste Management Contracts
6. Potential Cost Savings
7. Plan to Minimize Solid Waste Generation

A preliminary waste audit will be conducted at the Airport to evaluate the type and quantity of

waste generated by the Airport on facilities operated by the City and the Airport. The AVCON Team will regularly coordinate with the Airport for the duration of the Master Plan Update to receive information for the ARRWR Plan and discuss options for waste reduction.

The Sustainability Master Plan will be developed concurrently with the ARRWR. Therefore, project meetings for both the Sustainability Management Plan and the ARRWR will be conducted at the same time as a cost saving measure for the development of both plans. However, the ARRWR Plan must be reviewed and approved by the FAA. The AVCON Team will schedule one (1) meeting with the FAA to discuss the draft ARRWR Plan to ensure its compliance with FAA requirements. The AVCON Team will prepare meeting minutes of the FAA meeting.

The AVCON Team will submit an electronic version of the draft ARRWR Plan to the Airport for review and comment. After the Draft ARRWR Plan and Sustainability Management Plan Draft Meeting, the AVCON Team will address all comments to the ARRWR Plan within fifteen (15) business days after the meeting with the Airport. Once all comments have been addressed, the final ARRWR Plan will be submitted to the City and the Airport in both electronic and hard copy formats. After the final ARRWR Plan has been approved by the City and the Airport, the final ARRWR Plan will be submitted to the FAA in hard copy format.

The AVCON Team will prepare meeting agendas, attendance sheets, meeting minutes where appropriate, and appropriate support materials such as maps and a draft and final ARRWR Plan.

TASK 5 AIRPORT ALTERNATIVES ANALYSIS

This task includes the development of graphical alternatives, which depict methods to either resolve deficiencies or to construct new facilities necessary to accommodate future expectations of demand. The alternatives include potential improvements to airside, landside, FBO terminals, and associated support facilities and will also include a review of land utilization and overall compatibility. These alternatives will be presented to the Airport staff for their input to identify a "selected or preferred" alternative development. If advised by the Airport staff, the alternatives can also be presented to the City Commission for review and comment.

Task 5.1 Identify Potential Airport Land Use

As part of the alternative analysis, the AVCON Team will evaluate the highest and best use of existing Airport property. Further, an overview of adjacent parcels will be reviewed to identify property that might be required for potential future development, FAA requirements and/or compatible land use. On-Airport property will further be segregated into aviation or non-aviation land uses to provide a base for airside and landside development options. Possible changes to local ordinances, where potentially required, will be considered in the evaluation of the land use and subsequent airfield alternative analyses.

Task 5.2 Identify Potential Airfield Alternatives

Based on the Airport Facility Requirements established in preceding tasks, a maximum of three (3) preliminary airfield development alternatives will be developed for this master plan update. These alternatives may include such items as runway improvements (e.g. extension), taxiway improvements, as well as actions to address possible design related deficiencies, such as deficient Runway Safety Areas, on the Airport. The preliminary development concepts will show necessary runway and taxiway development during the 20-year planning period as well as required changes to infrastructure to accommodate each airfield option evaluated. This task will be conducted simultaneously with the following tasks and will result in a series of overall concepts for the current Airport site and adjacent properties. Airfield alternatives will be analyzed based on their ability to satisfy the identified facility requirements, environmental considerations, engineering factors, cost, phasing, economic and political viability, and ease of implementation.

Task 5.3 Identify General Aviation Alternative Development

Based on general aviation facility requirements, a maximum of three (3) preliminary general aviation area development options will be developed within existing Airport boundaries. The general aviation alternatives analysis will show development necessary to accommodate the demand expected over the 20-year planning period. This sub-task will be conducted simultaneously with other sub-tasks in this task and will result in a series of overall concepts. General aviation alternatives will be evaluated on the basis of their efficiency in meeting identified facility requirements, engineering factors, ease of implementation, costs, phasing, airside and landside accessibility, and environmental considerations leading to the selection of the option or combination of options that best satisfy the identified need.

Task 5.4 Identify Potential Landside Alternatives

Drawing from feedback gathered earlier in the study, the AVCON Team will work with the Airport to confirm guiding themes and principles for development of the landside alternatives including non-aviation development concepts for additional on-Airport revenue generation aligned with local and statewide zoning statutes and FAA/FDOT compatible land use requirements. Principles may include, but not be limited to sustainability, revenue generation, sense of place, job creation, market viability, and overall physical character. Based upon the established themes, the Team will develop up to three (3) landside scenarios.

Task 5.5 FBO Terminal Area Alternatives

Based on the forecast of demand and the FBO GA passenger terminal area facility requirements developed in previous tasks, up to two (2) facility alternatives addressing the identified facility needs, if any, will be developed and graphically depicted, if required. This sub-task will be conducted simultaneously with other sub-tasks in this task and will result in a series of overall development options. Factors such as short and long-term access to the site; ability to provide the necessary infrastructure; existing and future airfield facilities;

environmental impacts; and overall cost considerations will influence the selection of alternative locations and configurations of the proposed facility.

Task 5.6 Identify Potential Airport Support Facilities

Based on the ultimate airfield configuration and other changes proposed in the Master Plan Update, there may be a need to reconsider the placement of some support facilities at the Airport. This may include such facilities as the fuel farm, maintenance facilities, NAVAIDs, etc. This analysis will identify the key Airport support facilities at the Airport and define alternatives to address these and other issues that may arise in the planning process. Airport support facility alternatives will be evaluated on the basis of their efficiency in meeting identified facility requirements, engineering factors, impact on other Airport development options, ease of implementation, costs, phasing, airside and landside accessibility and environmental considerations leading to the selection of the options best satisfying the identified need. The graphical depictions of support facility alternative(s) may be included in the development of the airfield, landside, and terminal alternative scenarios.

Task 5.7 Development of Airport Development Composite Alternatives

With Airport staff, the AVCON Team will develop up to three Airport Development Composites from the alternatives that have been developed in Tasks 5.1 through Task 5.6. These Airport Development Composite Alternatives will feature selected alternatives and marry them with other alternatives from other areas to address the needs of the Airport as defined in Task 4.

Task 5.8 Determine Preliminary Impacts and Development Costs

Using labor and materials price data from recent construction projects preliminary order of magnitude cost estimates associated with the Airport Development Composite Alternatives will be prepared for comparison purposes only. Cost estimates at this point would be limited to 2020 dollars and to only those analyses required to effectively evaluate potential development scenarios.

Task 5.9 Selection of Preferred Alternative

With the Airport staff, the AVCON Team will develop a set of evaluation criteria to be used in selecting a preferred Airport Development Composite Alternative. Evaluation criteria could include ability to meet the Facility Requirements of Task 4, costs, environmental considerations, accessibility, and others. The evaluation criteria will be applied to each of the Airport Development Composite Alternatives and a preferred alternative will be selected.

Task 6 Alternatives Refinement

This task includes the refinement and consolidation of the previously identified preferred Airport Development Composite Alternative for approaches, airfield, landside, terminal, and support facility development. This effort also includes a more in-depth discussion of environmental impacts, regulatory requirements including land use and zoning, and potential

mitigation measures. In addition, a detailed list of capital improvement projects will be documented in this task. The refined alternative will ultimately be utilized as the foundation for development of the Airport Layout Plans drawing set.

Task 6.1 Refined Alternative Analysis

Based on input from the Airport, refinements to the analysis of alternatives will be made to address any issues raised or direction received during the review process. This task may result in the revision of options or the combination of individual alternatives into a new Airport Development Composite Alternative for implementation. This task will identify the rationale for the refinement of the preferred alternatives, and each refinement will be discussed and reviewed using similar criteria to that used to evaluate the initial set of alternatives. Once the refined alternative has been approved by the Airport, it cannot be revised without additional scope and fee.

Task 6.2 Environmental Action Plan

In accordance with FAA Order 1050.1, each development area within the refined alternatives will be reviewed regarding the following information:

- Potential environmental impacts to natural resources
- Environmental documentation required based on FAA Order 1050.1: determination as to whether a project will likely require a categorical exclusion, an environmental assessment, or an environmental impact statement level of documentation
- Anticipated state and federal regulatory requirements
- Potential mitigation measures or options for associated environmental impacts for the proposed project

Task 6.3 Identify Capital Improvements

Based upon the findings identified in Task 6.1, a list of capital improvements including environmental, design, land acquisition, mitigation, support facilities, etc. will be identified. This will allow the AVCON Team and the Airport to obtain a "snapshot" of all proposed projects in conjunction with anticipated order of magnitude costs in 2020 dollars.

Task 7 Airport Layout Plan Drawing Set

An approved Airport Layout Plan serves as the blueprint for future Airport development and is legally required for the Airport to receive financial assistance under the terms of the Airport and Airway Improvement Act of 1982 (AIP), as amended. The current Airport Layout Plan (ALP) drawing set will be updated using the recommended development options of the refined alternatives task and the standards outlined in FAA AC 150/5300-13A, *Airport Design* and FAA AC150/5070-6B, *Airport Master Plans*. Development of ultimate airfield facilities will be based on short, intermediate, and long-term requirements, which incorporate both airside and

landside improvements. To provide an accurate base for the development of the ALP, available rectified aerial photography and digital mapping information will be used, where available. All components of the Airport Layout Plan set described herein will be developed in accordance with the provisions of the FAA ARP Standard Operating Procedure 2.00, *Review and Approval of Airport Layout Plans (ALPs)*.

As the Airport does not currently have a required Exhibit "A", Airport Property Inventory Map, an Exhibit "A" will be developed separately but in conjunction with the ALP set. It will be developed in accordance with the provisions of AC 150/5070-6B, *Airport Master Plans*, and FAA ARP Standard Operating Procedure 3.00, *Review of Exhibit "A" Airport Property Inventory Maps*.

Task 7.1 Development of Draft Airport Layout Plan Drawing Set and Exhibit "A" Airport Property Inventory Map

Drawings to be included in the Airport Layout Plan drawing set and the Exhibit "A" Airport Property Inventory Map are as follows:

1. Title Sheet
2. Airport Data Sheet
3. Existing Airport Layout Plan
4. Future Airport Layout Plan
5. Terminal Area Plan
6. Airport Airspace Drawing
7. Inner Portion of the Approach Surface to Runway 15 Drawing
8. Inner Portion of the Approach Surface to Runway 33 Drawing
9. Inner Portion of the Approach Surface to Runway 6 Drawing
10. Inner Portion of the Approach Surface to Runway 24 Drawing
11. Obstacle Action and Disposition Plans Runway 15/33
12. Obstacle Action and Disposition Plans Runway 6/24
13. Runway Departure Surface Drawing
14. Runway Departure Surface Obstacle and Disposition Plan
15. Land Use Plan
16. Exhibit "A" Airport Property Inventory Map
17. Exhibit "A" Airport Property Inventory Map Tables
18. Exhibit "A" Airport Boundary Survey

A detailed description of each sheet or set of sheets follows.

Title Sheet - The title sheet will be updated, and information concerning the Airport including project number, the Airport Sponsor's name, approval blocks, revision blocks, location maps, and other pertinent information will be included on this sheet.

Kissimmee Gateway Airport
Master Plan Update
Scope of Work

Airport Data Sheet – The Airport Data Sheet contains data specific to the Airport Layout Plan. This data includes the wind roses for the Airport runways, runway data, safety separation distances, declared distance charts, elevations of specific Airport, runway, and taxiway points, etc. Existing and proposed modifications to FAA design standards will be identified and delineated in table format along with either the waiver allowing the modification or the proposed method of addressing the modification. A table listing any modifications (existing and proposed) along with their proposed disposition will be incorporated onto the ALP and in the narrative chapter. Because of the amount of data that will be shown on this sheet, it is likely that this sheet will extend into two sheets.

Airport Layout Plan Existing Facilities (ALP) - The ALP will be updated to reflect the current existing facilities that has occurred on the Airport since the last ALP update, as well as the recommended development of future needs as identified in this study. Information on this portion of the ALP set will include, but not be limited to the physical layout of the Airport and of the physical facilities developed thereon. Also, to be incorporated on the ALP sheet will be the building and facilities data, runway protection zones, taxiway systems, navigational aid critical areas, building elevations, topography, roads, and parking areas, and the Airport boundary. Object, building, and any other obstruction heights will be taken from existing sources of information.

Airport Layout Plan Future Facilities (ALP) - The ALP will be updated to reflect the selected preferred alternative that reflects the future needs of the Airport, as identified in this study. Information on this portion of the ALP set will include, but not be limited to the physical layout of the Airport and of the physical facilities developed thereon. Of great interest on this sheet will be any changes to the building and facilities, runway protection zones, taxiway systems and protection areas, navigational aid critical areas, building elevations, topography, roads, and parking areas, and any proposed changes to the Airport boundary.

Terminal Area Plans (4)– The terminal area plans for the north quadrant as defined by the two runways and the boundary of the Airport, any recommended development of future needs as identified in this study.

Airport Airspace Drawing - The Airport Airspace Drawing will depict all obstacle clearance surfaces associated with the ultimate Airport configuration, and approaches will be generated and superimposed on mapping or aerial photography. Fifty (50) foot contour intervals will be shown for all sloping imaginary surfaces. This sheet will depict objects that violate the obstacle clearance surfaces that have not been identified on the ALP or the inner approach sheets. The top elevation of each known obstruction will be identified as will the disposition of the obstruction. The dimensions of the approach surfaces and transitional surfaces will be charted. The Airport Airspace Drawing will depict the full length of all approach surfaces. All known obstructions to navigable airspace off-Airport will be identified using the current FAA

OE AAA website and through Obstructions identified as a part of the AGIS survey. Because one of the approaches to the Airport is an ILS approach, it is anticipated that this sheet may have to be broken up into two sheets to appropriately show the approach to Runway 15 as well as the obstruction information.

Inner Portion of the Approach Surface Drawings (4) - An Inner Portion of the Approach Surface Drawing will be prepared for each runway end (four runway ends) depicting the area out to where the approach surface reaches a 100-foot height above the runway end. The drawings will depict the Airport property, location of roadways, structures, natural ground elevations, and other man-made or natural features within the limits of inner portion of the approach surface. The drawings will also detail known objects that penetrate approach surfaces or violate obstacle clearance criteria. Obstructions will be listed numerically in an obstruction table for each approach with data describing the obstruction type, top elevation, allowable elevation, amount of penetration, and proposed dispositions. Additionally, the drawings will depict the configuration of required safety areas off each runway end. Plan views will be superimposed on aerial photos or a detailed line drawing. Known obstructions to navigable airspace off-Airport will be identified using the FAA OE/AAA website and the information provided as part of the AGIS survey.

Obstacle Action Plan (OAP) and Obstacle Disposition Plan (ODP)— An OAP and an ODP may be needed if existing obstacles penetrate any of the approach or departure surfaces. Additionally, any penetrations to the Threshold Siting Surfaces (TSS) will need to be mitigated by removing, relocating, and/or lowering the obstacle. No penetrations to the TSS or 20:1 TERPS will be acceptable as part of the analysis required for the airspace sheets included within the ALP set. If identified, they will be recommended for removal as soon as possible. Depending on the number of obstacles identified from existing sources and as a result of the AGIS study, the OAP and ODP sheets could run from one to six sheets.

Runway Departure Surface Drawing – The Runway Departure Surface drawing will be developed to show the departure surface for each runway end that has or is proposed to have an instrument departure. Three of the runway ends at the Airport currently have instrument approaches and therefore also have departure surfaces. This drawing will show the applicable departure surface as defined in Paragraph 303 of AC 150/5300-13A, *Airport Design*. The base for the drawings will be a current digital aerial. The drawings will include both plan and profile views and obstruction data tables as obtained from existing sources and the AGIS study to be done as part of the Master Plan Update.

Runway Departure Surface – Similar to Obstacle Action and Obstacle Disposition Plans, this sheet tracks the penetrations to the Departure Surface and indicates the disposition of these obstacles either through removal, relocation, marking, and/or lowering of the obstacle.

Land Use Plan – A land use plan for the area within the boundaries of and immediately adjacent to the Airport will be updated, based on the findings of the land use analysis and property data. Included in the drawing will be the identification of existing and future aviation related, non-aviation related, environmental and conservation, industrial, commercial, or other uses as required. Information developed as part of earlier tasks will be incorporated into this drawing. This sheet will help to guide the long-term development of the Airport. The Land Use Plan will be prepared in coordination with the current City land use, zoning, and transportation planning ordinances.

Exhibit "A" Airport Property Inventory Map – The Airport does not currently have an Exhibit "A". This drawing will be prepared in accordance with FAA ARP Standard Operating Procedure No. 3.00, *FAA Review of Exhibit "A" Airport Property Inventory Maps*, and will depict the existing Airport property boundary, as well as any future acquisition areas proposed as part of this Master Plan Update. The previously approved Airport Property Map will be used as the starting point for this effort. This sheet will be updated to include information for any new parcels that have been acquired since the approval of the previous Airport Property Map update

As part of the development of both the Master Plan Update and the Exhibit "A" Airport Property Inventory Map, a Boundary Survey for the Airport will be prepared. The Boundary Survey will be prepared in accordance with the State of Florida Standards of Practice for Surveying and Mapping, as set forth by the Board of Professional Surveyors and Mappers, Chapter 5J-17, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Boundary survey tasks for this project shall consist of the recovery and/or establishment of all exterior boundary corners of the property only. No location of interior improvements will be included in this survey, and internal corners between multiple parcels will be set or searched for except as to support the outer boundary lines. The Boundary Survey will be tied relative to Airport Control Station(s) and the resulting deliverable digital file will be based on North American Datum of 1983 (NAD 83) State Plane Coordinates, Florida East Zone, referenced to Airport Control. Any plottable easements and/or other encumbrances, if authorized by research or otherwise provided by the Airport, will be graphically displayed upon the survey. Up to five (5) copies of signed and sealed survey hard copy drawings will be provided, or a signed and sealed surveyor's report if drawings are only delivered in a digital format.

The AVCON Team will provide parcel deeds, where available, for the currently owned parcels at the Airport. Current Osceola County Property Appraiser records show a total of approximately 64 parcels owned by the City of Kissimmee on behalf of the Airport. Of these 64 parcels, approximately 40 appear to have clear title since the return of the Airport to the City of Kissimmee by the U.S. government in 1947 through the War Assets Administration. It is proposed that a title search back to the year 1947 be accomplished for up to 30 parcels. It

is further proposed that the property records associated with Kissimmee Gateway Airport located at the Airport, the City of Kissimmee, and the FAA Orlando Airports District Office (ADO) be searched to retrieve all copies of Deeds of Release for properties returned to the City in 1947 that may have been sold since that time.

An online search of public records to recover all recorded easements will be performed as part of this task. Airport and City records will also be relied upon for easement information

Task 7.2 Final Airport Layout Plan Drawing Set and Exhibit "A" Airport Property Inventory Map

The AVCON Team will revise the ALP drawing set and the Exhibit "A" Airport Property Inventory Map to reflect final review comments received from the Airport, the FAA, and the FDOT, as appropriate. After obtaining final comments and approval from the City, the FDOT, and FAA, the AVCON Team will work with the appropriate departments within the City of Kissimmee to adopt the final report and drawing set into the Kissimmee Comprehensive Plan.

Task 8 Facilities Implementation Plan

This task includes the phasing, quantities, refined costs, and funding options for each project necessary to achieve development as illustrated in the Airport Layout Plans drawing set.

Task 8.1 Refine Airport Development Cost Estimates

Based upon the selected development concepts, cost estimates will be created for each of the Airport development projects. Cost estimates will be based on a variety of sources, including actual project estimates, published engineering indices, government agencies, and similar airport construction projects in the area. In addition to the actual construction costs, financial consideration must be given to the engineering and design work, plus minor construction items and contingencies, which have not been specifically enumerated. For planning purposes, the base construction cost will be increased to reflect the anticipated engineering, testing, survey, and inspection costs, as well as for unknown contingencies.

Task 8.2 Refine Airport Development Phasing Schedule

An initial development schedule will be prepared based upon the demand requirements. A priority system will be developed and adopted for use in this study considering the urgency of need, ease of implementation, logic of sequence, and economic viability. The objective is to establish an efficient order for project development and implementation. Recommended Airport development over the 20-year planning period will be classified in three general development phases. These phases represent the short-, intermediate-, and long-term planning periods.

Focus will be given to detailing estimated costs for development projects, which fall within the short and intermediate planning periods. Development costs will be shown on a year-to year

basis for the first ten (10) years and prepared at a level of detail consistent with both FAA and FDOT master plan guidance. Projects delineated for the long-term planning period, those projected to occur within the 10- to 20-year period, however, will be grouped together collectively. These projects will be listed in tabular format and include an associated cost estimate and funding breakdown. However, they will not include a year by year phasing breakdown. Development phasing will provide a general understanding of the financial requirements needed throughout the 20-year planning period. By linking development projects to future demand levels, an added degree of implementation flexibility can be achieved.

Task 8.3 Identify Potential Sources of Funding

As part of the Capital Improvement Program (CIP) process, a detailed funding plan for the recommended capital improvements identified in the Master Plan Update will be prepared with an emphasis on the short-term (five years) planning period. Proposed projects will be evaluated to determine eligibility for funding by Federal Aviation Administration Airport Improvement Program, Florida Department of Transportation Work Program, and other alternative funding sources including third party funding, bonds, loans, etc. The local funding requirement will be estimated and potential opportunities for satisfying the local share requirement will be identified.

Task 8.4 Capital Improvement Program

The Capital Improvement Program (CIP) is the key element of the facility implementation plan. The projects shown on the Airport Layout Plan (ALP) must be broken down into specific projects. These projects will be incorporated into the Airport's CIP. These CIP projects must be integrated into the Airport's overall program of facility improvement projects, repair projects, and maintenance projects. All the Airport's capital projects must be coordinated regarding schedule, scope, and sources and uses of funds to produce a realistic CIP. The Airport's CIP must contain all capital projects including those that may not be reflected in the FAA/FDOT Joint Automated Capital Improvement Program (JACIP) planning software.

It is also important that the CIP document informs all readers that while certain projects or portions of projects may be eligible for FAA and FDOT funding, this is not a guarantee of funding. Many projects may not receive funding due to limited available funds and federal and state funding priorities.

This task will also include a full review of the Airport's projects currently in the JACIP. The JACIP will be fully updated and revised to reflect the current pertinent projects within the CIP.

Task 9 Public Involvement/Meetings

The following approach facilitates a process of maximum public input with minimum public conflict. The public involvement components will provide an opportunity for input from a variety of sources and to provide participants with valuable insight into the master planning process.

Task 9.1 City Commission Briefings

A maximum of four (4) City Commission briefings will be given by representative Team members during the project. These briefings are seen as key opportunities to allow for the interaction between the City Commission and the AVCON Team at key milestones in the project, such as before the submittal of Forecasts of Aviation Activity to the FAA and FDOT, after the development of Facility Requirements, after the development of Airport Development Composite Alternatives, or after the development of the Capital Improvement Program (CIP). These meetings could become teleconferences if the current pandemic restrictions are still in place.

Task 9.2 Public Information Workshop

It is proposed that a maximum of two (2) public information workshops be held to present to the public in a series of workstations the major elements of the Master Plan Update. The two meetings could be held at the following periods of the project:

- At the end of the Development and Evaluation of Airport Composite Alternatives, but before a Preferred Alternative is selected
- At the end of the project when the project cost estimates have been refined and the CIP has been developed

This task includes the development of and materials and equipment as necessary to provide exhibits for the workshop, PowerPoint presentations, survey material, and handout materials for the workshops.

Task 9.3 Coordination Meetings

To respond to issues that will arise over the course of the planning study, as well as to brief Airport representatives and representatives of the FAA and/or the FDOT, three (3) project coordination meetings (outside of other meetings, sessions, or briefings) have been budgeted. Coordination meetings are key opportunities to allow for the discussion between the Airport and/or City and the AVCON Team at one of several key milestones in the project.

Typically, the coordination meeting can be conducted during such milestones as the preparation of the aviation activity forecasts, the alternatives analysis/refined alternatives process, and during the preparation of the capital improvement program and potential funding plan. However, these coordination meetings can be changed at any time or during any portion of the project.

Task 10 Master Plan Documentation and Deliverables

Project documentation/deliverables will consist of both the Master Plan Narrative Report and Airport Layout Plan (ALP) drawing set. As part of this project, four working papers, submitted

electronically and in hardcopy, will make up the draft Master Plan Narrative Report and will be provided at key points in the master plan process. Both the Master Plan Narrative Report and ALP drawing set will be produced in a draft and final report format. Planned submittals associated with this project are shown as follows:

Task 10.1 Working Paper 1

The first working paper will discuss the issues and information obtained during the inventory phase of the project, the environmental considerations, and the findings of the analyses conducted for the aviation activity forecast task. This working paper will present, in narrative and graphic format, information relating to Airport facilities, the access system serving the Airport, environmental features affecting the current Airport property and tracts immediately adjacent to the Airport, airspace and obstruction considerations, and data related to land use compatibility. Also, the draft working paper will address the historic and current activity levels, factors impacting the Airport, and the findings of the analytical portions of the forecast process. As noted in Task 3, *Aviation Activity Forecasts*, forecasts must be submitted to FAA and FDOT for review and approval. This task includes the preparation of a PowerPoint presentation and graphical board exhibits, as required.

Task 10.2 Working Paper 2

Working Paper 2 will document the information and evaluations of the capacity assessment process and the facility requirements. This working paper will present, in narrative and graphic format, information regarding existing Airport capacity, runway length needs, and required facilities necessary to meet future levels of activity. This task includes the preparation of a PowerPoint presentation and graphical board exhibits, as required.

Task 10.3 Working Paper 3

The third draft working paper will document the analyses and findings of the preliminary alternative analysis. This working paper will focus on the alternatives developed to address the development options associated with the airfield, FBO terminal areas, and all other Airport facilities and uses as well as considering the interrelationships between Airport uses and the impacts that development of individual facilities have on the other facilities and alternatives for other Airport uses. As such, this working paper will present, in narrative and graphic format, a chapter that compares the various development alternatives explored for the Airport. This task includes the preparation of a PowerPoint presentation and graphical board exhibits, as required.

Task 10.4 Working Paper 4

The fourth draft working paper will document the analyses and findings of the refined alternatives analysis, Airport Layout Plan, and the Implementation Plan. This working paper will present, in narrative and graphic format, refinements to the Airport Alternatives chapter, information regarding the Airport Layout Plan drawings and the Exhibit "A" drawings, and the

results of the Capital Improvement Program analyses conducted as part of the previous tasks. This task includes the preparation of a PowerPoint presentation and graphical board exhibits, as required.

Task 10.5 Project Deliverables

Master Plan Working Papers

An electronic copy of each of the four working papers will also be submitted either through email to the Airport Director or through a share file. Each Working Paper will also be distributed to the FAA Orlando Community Planner for the Airport through the OE/AAA website and to the FDOT District Five representative through JACIP. Each draft working paper will be prepared in black and white text with some color supporting graphics. As part of the Working Paper 4 submittal, three (3) full size sets of the draft ALP set and Exhibit "A" in addition to the 11" x 17" ALP sheets included in the narrative report will be submitted to the Airport, the FAA ADO, and the FDOT District 5 (one set each) for initial review. Comments received from the Airport, FAA, and FDOT from each working paper will be incorporated before submitting the final draft submittal to the Airport, FAA, and FDOT for their initial review. This task includes the effort to print drawing sets. Working papers will be distributed to allow a minimum of seven (7) days or additional time as agreed by the AVCON Team and the Airport for review.

Initial Agency Draft Report Submittal

Review comments received during the study process will be incorporated as appropriate into the draft working papers, which will be combined to create the Kissimmee Gateway Airport Master Plan Update Narrative Report for initial review.

Three (3) final draft copies of the complete Master Plan Narrative Report will be prepared and provided as follows: one (1) to FAA; one (1) to FDOT, and one (1) to the Airport for initial review. Three (3) sets of the Airport Layout Planning Set and the Exhibit "A" will be prepared and submitted as follows: one (1) to FAA, one (1) to the FDOT, and one (1) to the Airport for initial review

FAA Circulation Submittal

After receiving and addressing initial Airport, FDOT, and FAA ADO comments, the revised ALP and Exhibit "A", as well as the Narrative Report and the FAA ARP SOP 2.00 and FAA ARP SOP 3.00 checklists will be uploaded electronically to the Obstacle Evaluation/Airport Airspace Analysis (OE/AAA) website for circulation and review within the FAA.

Final Submittal

After receiving and addressing final Airport, FAA, and FDOT comments, eight (8) hardcopies copies of the final ALP drawing set and Exhibit "A" will be sent to FAA Orlando Airports District Office for final conditional approval/signature for distribution to FAA Regional Offices, FDOT District Offices, the Airport, and the AVCON Team. The AVCON Team will submit ten hard

Kissimmee Gateway Airport
Master Plan Update
Scope of Work

copies of the narrative report to the Airport, one (1) hard copy to the FDOT District Office, and two (2) hard copies to the FAA ADO. Digital copies of the Master Plan Narrative Report, the ALP, and the Exhibit "A" will be delivered on USB flash drives to the FAA, FDOT, and to the Airport in the following formats:

- Acrobat files (.pdf)
- CADD files (.dwg)
- GIS Shapefiles (.shp)

A final FAA conditionally approved electronic copy of the ALP drawing set and the Exhibit "A" will be uploaded to the Florida Aviation Database and to the JACIP. An electronic copy of the final Narrative Report will also be uploaded to the Florida Aviation Database and to the JACIP.

END OF SCOPE OF WORK

EXHIBIT B PROFESSIONAL SERVICES COMPENSATION KISSIMMEE GATEWAY AIRPORT AIRPORT MASTER PLAN UPDATE									
10/26/2020									
PLANNING LABOR									
Position:	Principal	Project Manager/Sr. Planner	Planner	Sr. Designer	Clerical	Total	Cost	Cost	Cost
Rate (\$/hour):	\$259	\$166	\$85	\$114	\$104	Hours			
TASK 1: Project Initiation and Scoping									
Task 1 Project Initiation and Scoping	0	8	0	0	2	10	\$1,536	\$153.60	
Sub-total Task 1	0	8	0	0	2	10	\$1,536	\$153.60	
TASK 2: Inventory of Existing Conditions									
Task 2.1 Review and Evaluate Existing Documents	0	4	6	0	0	10	\$1,174	\$117.40	
Task 2.2 Airport Role and Physical Facilities Inventory	0	4	6	4	0	14	\$1,630	\$163.00	
Task 2.3 Airspace Environment/Obstructions	0	4	6	2	0	12	\$1,402	\$140.20	
Task 2.4 Airport Director Interview	0	4	6	0	0	10	\$1,174	\$117.40	
Task 2.5 Verify Land Use/Existing Land Use Controls	0	4	6	4	0	14	\$1,630	\$163.00	
Task 2.6 Environmental Review	0	4	6	0	0	10	\$1,174	\$117.40	
Task 2.7 ASIS Survey and Coordination	0	2	0	0	0	2	\$332	\$33.20	
Sub-total Task 2	0	26	38	10	0	74	\$8,686	\$868.60	
TASK 3: Aviation Activity Forecasts									
Task 3.1 Historical and Current Air Traffic Activity	0	8	16	0	0	24	\$2,688	\$268.80	
Task 3.2 Factors and Opportunities Affecting Activity Levels	0	8	8	0	0	16	\$2,008	\$200.80	
Task 3.3 General Aviation Forecasts	0	8	20	0	0	28	\$3,028	\$302.80	
Task 3.4 Design Aircraft Identification	0	2	16	0	0	18	\$1,692	\$169.20	
Task 3.4 Aviation Activity Peak Analysis	0	2	8	0	0	10	\$1,012	\$101.20	
Sub-total Task 3	0	28	68	0	0	96	\$10,428	\$1,042.80	
TASK 4 - Capacity Assessment/Facility Requirements									
Task 4.1 Airfield Capacity	0	6	10	0	0	16	\$1,846	\$184.60	
Task 4.2 Runway Length Analysis	0	6	10	0	0	16	\$1,846	\$184.60	
Task 4.3 Airfield Facility Requirements	0	6	10	8	0	24	\$2,758	\$275.80	
Task 4.4 Runway Safety Area Evaluation and Determination	0	8	10	24	0	42	\$4,914	\$491.40	
Task 4.5 General Aviation Facilities	0	6	10	8	0	24	\$2,758	\$275.80	
Task 4.5 FBO General Aviation Terminal Facilities	0	6	10	8	0	24	\$2,758	\$275.80	
Task 4.5 Airport Support Facilities	0	6	10	8	0	24	\$2,758	\$275.80	
Task 4.7 Land Area and Landside Requirements	0	6	10	8	0	24	\$2,758	\$275.80	
Task 4.8 Sustainability Management Plan	0	8	24	24	0	56	\$6,104	\$610.40	
Task 4.9 Airport Recycling, Reuse, and Waste Reduction Plan	0	8	24	24	0	56	\$6,104	\$610.40	
Sub-total Task 4	0	66	128	104	0	298	\$33,692	\$3,369.20	

EXHIBIT B PROFESSIONAL SERVICES COMPENSATION KISSIMMEE GATEWAY AIRPORT AIRPORT MASTER PLAN UPDATE										10/26/2020		
PLANNING LABOR												
Position:	Principal	Project Manager/Sr. Planner	Planner	Sr. Designer	Clerical	Total	Avg Hr					
Rate (\$/Hour):	\$258	\$186	\$85	\$114	\$104	Hours	Cost	Cost				
TASK 5: Airport Alternatives Analysis												
Task 5.1 Identify Potential Airport Land Use	0	8	8	\$1,328	8	\$680	24	\$2,736	0	\$0	40	\$4,744 \$ 118.60
Task 5.2 Identify Potential Airfield Alternatives	0	8	8	\$1,328	16	\$1,360	96	\$10,944	0	\$0	120	\$13,632 \$ 113.60
Task 5.3 Identify General Aviation Alternative Development	0	8	8	\$1,328	16	\$1,360	40	\$4,560	0	\$0	64	\$7,248 \$ 113.25
Task 5.4 Identify Potential Landside Alternatives	0	8	8	\$1,328	16	\$1,360	20	\$2,720	0	\$0	44	\$4,968 \$ 112.91
Task 5.5 FBO Terminal Area Alternatives	0	8	8	\$1,328	8	\$680	20	\$2,280	0	\$0	36	\$4,288 \$ 119.11
Task 5.6 Identify Potential Airport Support Facilities	0	8	8	\$1,328	12	\$1,020	36	\$4,104	0	\$0	56	\$6,452 \$ 115.21
Task 5.7 Development of Airport Development Composite Alternatives	0	8	8	\$1,328	8	\$680	24	\$2,736	0	\$0	40	\$4,744 \$ 118.60
Task 5.8 Determine Preliminary Impacts and Development Costs	0	16	16	\$2,656	16	\$1,360	36	\$4,104	0	\$0	68	\$8,120 \$ 119.41
Task 5.9 Selection of Preferred Alternative	0	8	8	\$1,328	16	\$1,360	16	\$1,824	0	\$0	40	\$4,512 \$ 112.80
Sub-total Task 5	0	80	80	\$13,280	116	\$9,860	312	\$35,568	0	\$0	508	\$58,708 \$ 115.57
TASK 6: Alternatives Refinement												
Task 6.1 Refined Alternative Analysis	2	2	2	\$332	8	\$680	6	\$684	0	\$0	18	\$2,212 \$ 122.89
Task 6.2 Environmental Action Plan	2	2	2	\$332	8	\$680	6	\$684	0	\$0	18	\$2,212 \$ 122.89
Task 6.3 Identify Capital Improvements	2	2	2	\$332	8	\$680	6	\$684	0	\$0	18	\$2,212 \$ 122.89
Sub-total Task 6	6	6	6	\$996	24	\$2,040	18	\$2,052	0	\$0	54	\$6,636 \$ 122.89
TASK 7: Airport Layout Plan Drawing Set												
Task 7.1 Development of Draft Airport Layout Plans Set & Exhibit "A" Airport Property Inventory Map	2	48	48	\$7,968	190	\$16,150	568	\$64,752	0	\$0	808	\$89,386 \$ 110.63
Task 7.2 Final Airport Layout Plan Drawing Set & Exhibit "A" Airport Property Inventory Map	2	10	10	\$1,660	8	\$680	72	\$8,208	10	\$1,040	102	\$12,104 \$ 118.67
Sub-total Task 7	4	58	58	\$9,628	198	\$16,830	640	\$72,960	10	\$1,040	910	\$101,490 \$ 111.53
TASK 8: Facilities Implementation Plan												
Task 8.1 Refine Airport Development Cost Estimates	0	10	10	\$1,660	24	\$2,040	48	\$5,472	0	\$0	82	\$9,172 \$ 111.85
Task 8.2 Refine Airport Development Phasing Schedule	0	24	24	\$3,984	24	\$2,040	0	\$0	0	\$0	48	\$6,024 \$ 125.50
Task 8.3 Identify Potential Sources of Funding	0	10	10	\$1,660	32	\$2,720	0	\$0	0	\$0	42	\$4,380 \$ 104.29
Task 8.4 Capital Improvement Program	0	34	34	\$5,644	48	\$4,080	24	\$2,736	0	\$0	106	\$12,460 \$ 117.55
Sub-total Task 8	0	78	78	\$12,948	128	\$10,880	72	\$8,208	0	\$0	278	\$32,036 \$ 115.24
TASK 9: Public Involvement Meetings												
Task 9.1 County Commission Briefings (4)	0	48	48	\$7,968	24	\$2,040	24	\$2,736	0	\$0	96	\$12,744 \$ 132.75
Task 9.2 Public Information Workshop (1)	0	40	40	\$6,640	80	\$6,800	120	\$13,680	4	\$416	244	\$27,536 \$ 112.85
Task 9.2 Coordination Meetings (3)	0	36	36	\$5,976	18	\$1,530	18	\$2,052	0	\$0	72	\$9,558 \$ 132.75
Sub-total Task 9	0	124	124	\$20,584	122	\$10,370	162	\$18,468	4	\$416	412	\$49,838 \$ 120.97

EXHIBIT B PROFESSIONAL SERVICES COMPENSATION KISSIMMEE GATEWAY AIRPORT AIRPORT MASTER PLAN UPDATE												10/26/2020		
PLANNING LABOR												Total	Avg Hr	
Position:	Principal	Project Manager/ Sr. Planner	Planner	Sr. Designer	Clerical	Hours	Cost					Cost		
Rate (\$/Hour):	\$258	\$166	\$85	\$114	\$104									
TASK 10: Master Plan Documentation and Deliverables														
Task 10.1 Working Paper 1	0	0	4	\$664	10	\$850	3	\$342	2	\$208	19	\$2,064	\$ 108.63	
Task 10.2 Working Paper 2	0	0	6	\$996	10	\$850	2	\$228	2	\$208	20	\$2,282	\$ 114.10	
Task 10.3 Working Paper 3	0	0	4	\$664	10	\$850	6	\$684	2	\$208	22	\$2,406	\$ 109.36	
Task 10.4 Working Paper 4	0	0	6	\$996	10	\$850	2	\$228	2	\$208	20	\$2,282	\$ 114.10	
Task 10.5 Project Deliverables	0	0	6	\$996	10	\$850	2	\$228	2	\$208	20	\$2,282	\$ 114.10	
Sub-total Task 10	0	0	26	\$4,316	50	\$4,250	15	\$4,710	10	\$1,040	101	\$11,316	\$ 112.04	
TOTAL LUMP SUM ALL PLANNING LABOR												2,741	\$314,366	\$ 114.69
Direct Expenses														
Boundary Survey - Johnson's Surveying, Inc.	\$	32,500												
Title Search - American Governmental Services Corporation	\$	16,250												
Environmental Considerations - Storm L. Richards & Associates	\$	6,000												
AGIS Survey - Woolpert	\$	87,850												
Purchase Socioeconomic Data and Forecasts - Woods & Poole	\$	690												
Travel Expenses	\$	262												
Postage and Courier	\$	160												
Printing & Publishing Expenses	\$	6,126												
GRAND TOTAL DIRECT EXPENSES														
GRAND TOTAL LUMP SUM ALL PLANNING LABOR AND DIRECT EXPENSES													\$464,204	

EXHIBIT B PROFESSIONAL SERVICES COMPENSATION KISSIMMEE GATEWAY AIRPORT AIRPORT MASTER PLAN UPDATE		
POSTAGE AND COURIER		
Working Paper No. 1	\$	-
Working Paper No. 2	\$	-
Working Paper No. 3	\$	-
Working Paper No. 4	\$	40.00
Initial Agency Draft Report Submittal	\$	40.00
FAA Circulation Submittal	\$	-
Final Submittal	\$	80.00
Total Postage and Courier	\$	160.00

EXHIBIT B PROFESSIONAL SERVICES COMPENSATION KISSIMMEE GATEWAY AIRPORT AIRPORT MASTER PLAN UPDATE									
PRINTING AND PUBLISHING EXPENSES									
	Cost Per	No. of Drawings	No. of Pages 8.5x11 B&W	No. of Pages 11x17 Color	Covers	Binders & Separators	No. of Sets	Total Cost	
Working Paper No. 1		\$3.24	\$0.40	2.27	3.1	25.82			
Z-folds			250				0	\$0.00	
Covers				23			0	\$ -	
					2		0	\$ -	
Working Paper No. 2			30				0	\$ -	
Z-folds				3			0	\$ -	
Covers					2		0	\$ -	
Working Paper No. 3			35				0	\$ -	
Z-folds				18			0	\$ -	
Covers					2		0	\$ -	
Working Paper No. 4			40				0	\$ -	
Z-folds				20			0	\$ -	
Covers					2		0	\$ -	
Drawings		18					4	\$ 233.28	
Initial Agency Draft Report Submittal									
Narrative Report			355	64	2		3	\$ 880.44	
ALP and Exhibit "A"		18					3	\$ 174.96	
SOP 2.0 and SOP 3.0			50				3	\$ 60.00	
FAA Circulation Submittal									
Narrative Report			355	64	2		0	\$ -	
ALP and Exhibit "A"		18					0	\$ -	
SOP 2.0 and 3.0			50				0	\$ -	

**KISSIMMEE GATEWAY AIRPORT
AIRPORT MASTER PLAN UPDATE**

PRINTING AND PUBLISHING EXPENSES								
		No. of Drawings	No. of Pages 8.5x11 B&W	No. of Pages 11x17 Color	Covers	Binders & Separators	No. of Sets	Total Cost
	Cost Per	\$3.24	\$0.40	2.27	3.1	25.82		
Final Submittal								
	Narrative Report		355	64	2	1	13	\$ 4,150.90
	ALP and Exhibit "A"	18					8	\$ 466.56
	SOP 2.0 and 3.0		50				8	\$ 160.00
							Total Printings and Publishing Expenses	\$6,126.14

EXHIBIT B
PROFESSIONAL SERVICES COMPENSATION

KISSIMMEE GATEWAY AIRPORT
AIRPORT MASTER PLAN UPDATE

Travel Expenses

Meeting	No. of Meetings	No. of Persons per Trip	Car Mileage	Hotel	Breakfast	Lunch	Dinner	Total
			\$ 0.545	\$0	Included	\$ -	\$ -	
Inventory Trip	1	2	\$ 26.16	\$0	\$ -	\$ -	\$ -	\$ 26.16
Sustainability and Recycling Kick-off Meeting	1	2	\$ 26.16	\$0	\$ -	\$ -	\$ -	\$ 26.16
Sustainability and Recycling Inventory Meeting	0	1	\$ -	\$0	\$ -	\$ -	\$ -	\$ -
Sustainability and Recycling Draft Report Meeting	0	1	\$ -	\$0	\$ -	\$ -	\$ -	\$ -
County Commission Meetings	4	2	\$ 104.64	\$0	\$ -	\$ -	\$ -	\$ 104.64
Coordination Meetings	4	2	\$ 104.64	\$0	\$ -	\$ -	\$ -	\$ 104.64
Total Travel Expenses								\$ 261.60

Note: Round-trip Mileage Between Orlando and Kissimmee Gateway Airport = 48 miles

ITEM 7.I

CITY OF KISSIMMEE PARTICIPATION IN THE OSCEOLA COUNTY HOME CONSORTIUM

Request

Authorization for the Mayor to sign a letter renewing participation in the Osceola County Consortium for Fiscal Years 2022-2024.

Explanation

In 2015, the City of Kissimmee and Osceola County entered into an agreement to form the Osceola County HOME Consortium. Forming a consortium is a way for local governments that would not otherwise qualify for funding to join with contiguous jurisdictions to directly participate in the HOME Investment Partnerships (HOME) and the Emergency Shelter Grant (ESG) programs.

As the lead entity of the Consortium, Osceola County has to requalify as an Urban County for the CDBG/HOME/ESG Grants federal fiscal years 2022-2024 and it must notify the U.S. Department of Housing and Urban Development (HUD) if the City is interested to be included in the Osceola County Urban County Qualification for the 2022-2024 period.

This requalification process does not affect the designation of the City of Kissimmee as an entitlement jurisdiction under the Community Development Block Grant (CDBG) program.

Recommendation

Authorize the Mayor to sign letter renewing participation in the Osceola County Consortium for Fiscal Years 2022-2024.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. FY22-24_for execution



OFFICE OF THE CITY COMMISSION

MAYOR OLGA GONZALEZ

101 CHURCH STREET, SUITE 500 - KISSIMMEE, FLORIDA 34741 - 407.518.2315

June 1, 2021

Ms. Danicka Ransom
Assistant Human Services Director
Osceola County Human Services Department
330 N. Beaumont Avenue
Kissimmee, FL 34741

Re: Osceola County Urban County Qualification for the 2022-2024 period

Dear Ms. Ransom:

Please allow this correspondence to confirm that the City of Kissimmee desires to continue to be included in the Osceola County Urban County Qualification for the 2022-2024 period. Our participation will allow Kissimmee to remain a member of the Osceola HOME Consortium for purposes of receiving funding from the HOME Investment Partnerships (HOME) and the Emergency Shelter Grant (ESG) programs.

Please contact Frances De Jesus, Housing and Community Development Coordinator if you should have any questions concerning this correspondence or require additional information.

Sincerely,

Olga Gonzalez
Mayor



ITEM 7.J

AMENDMENT TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION GRANT AGREEMENT FOR DESIGN OF THE WOODSIDE DRAINAGE IMPROVEMENT PROJECT

Request

Approval of an amendment to extend an Florida Department of Environmental Protection (FDEP) grant agreement to allow additional time for design of Phase II of the Woodside Drainage Improvement Project.

Explanation

On November 3, 2020, the City amended the grant agreement with FDEP which repurposed construction funds to go towards additional design that was needed due to unforeseen site-specific challenges.

The agreement is set to expire on June 30, 2021 and in order for the additional design of the phase II improvements to be completed, the agreement will need to be extended to June 30, 2022.

There will be no financial impact; the project is fully funded.

Recommendation

Staff recommends Commission approval to extend the FDEP grant agreement to allow additional time for design of the phase II drainage improvements.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. FDEP and COK Agreement No. LP49010 - Amendment 2 for Signature

**AMENDMENT NO. 2
TO AGREEMENT NO. LP49010
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
CITY OF KISSIMMEE**

This Amendment to Agreement No. LP49010 (Agreement), as previously amended, is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and the City of Kissimmee (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for the Woodside Drainage Improvements (Project), effective November 30, 2017; and,

WHEREAS, the Grantee has requested a revision in the scope of work, and an extension of the Agreement is needed due to allow for the final payment requests; and,

WHEREAS, the parties wish to amend the Agreement as set forth herein to allow for the extension; and,

NOW THEREFORE, the parties agree as follows:

1. The Agreement is effective until June 30, 2022. The reimbursement period for this Agreement begins on July 1, 2017 and ends at the expiration of the Agreement. The Department and the Grantee shall continue to perform their respective duties during this extension period pursuant to the same terms and conditions provided in the Agreement.

2. Section 2.d. of Attachment 1 is deleted and replaced as follows:

This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following: (1) an increase or decrease in the Agreement funding amount; (2) a change in Grantee's match requirements; (3) a change in the expiration date of the Agreement; and/or (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department. A change order to this Agreement may be used when: (1) task timelines within the current authorized Agreement period change; (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department; (3) changing the current funding source as stated in the Standard Grant Agreement; and/or (4) fund transfers between budget categories for the purposes of meeting match requirements. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.

3. All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

CITY OF KISSIMMEE

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Mayor

By: _____
Secretary or Designee

Print Name of Authorized Representative

Trina Vielhauer, Director
Print Name and Title of Authorized Person

Date: _____

Date: _____

Mary-Elizabeth Parker, DEP Grant Manager

Sandra Waters, Program Administrator

List of attachments/exhibits included as part of this Amendment:

<u>Specify Type:</u>	<u>Letter/ Number:</u>	<u>Description (include number of pages):</u>
<u>Attachment</u>	<u>3-2</u>	<u>Revised Grant Work Plan (3 Pages)</u>

**ATTACHMENT 3-2
REVISED GRANT WORK PLAN**

PROJECT TITLE: Kissimmee Woodside Drainage Improvements

PROJECT LOCATION: The Project will be located in the Park at Sorrento apartment complex, formerly known as Woodside Apartments, 900 Woodside Circle, Kissimmee, FL 34741, which is located within the City of Kissimmee in Osceola County, Florida; Lat/Long (28.2999, -81.4342). See Figure 1 for a location map.

PROJECT BACKGROUND: In December 2015, the City of Kissimmee (Grantee) Board of Commissioners adopted the updated Local Mitigation Strategy (LMS) Plan. The LMS Plan identifies and priorities the reduction or elimination of all hazards within the City. Improving stormwater drainage in the Parks at Sorrento apartment complex was identified as one of the priorities for the City.

PROJECT DESCRIPTION: The Grantee will upgrade the existing infrastructure in the Park at Sorrento apartment complex to the recommendations provided in the Grantee's LMS Plan. While subject to final engineering design, the proposed stormwater improvement will consist of upgrading existing pipe sizes, replacing failing corrugated metal pipe, installing a check valve for the existing canal outfall, addressing road crossings, and removing pipes with negative slopes, replacing fill, asphalt and sod. Proposed improvements are expected to eliminate flooding for 25-year critical events and reduce 100-year critical event flooding by fifty percent.

TASKS: All documentation should be submitted electronically unless otherwise indicated.

Task 1: Design and Permitting

Deliverables: The Grantee will complete the design of the draining improvements consisting of upgrading existing pipe sizes, replacing failing corrugated metal pipe, installing a check valve for the existing canal outfall, addressing road crossings, and removing pipes with negative slopes and obtain all necessary permits for construction of the project.

Documentation: The Grantee will submit: 1) a signed acceptance of the completed work to date, as provided in the Grantee's Certification of Payment Request; and 2) a summary of design activities to date, indicating the percentage of design completion for the time period covered in the payment request. For the final documentation, the Grantee will also submit a copy of the design completed with the funding provided for this task and a list of all required permits identifying issue dates and issuing authorities.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by, and all documentation received by, the corresponding task end date. Cost reimbursable grant funding must not exceed the budget amounts as indicated below.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Design and Permitting	Contractual Services	\$500,000.00	07/01/2017	12/31/2021
Total:			\$500,000.00		

Note that, per Section 8.h. of Attachment 1, authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations. Extending the contract end date carries the risk that funds for this project may become unavailable in the future. This should be a consideration for the Grantee with this and future requests for extension.

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Figure 1: Location Map



ITEM 7.K**POLICE DEPARTMENT EVIDENCE ROOM RENOVATION BY GROVE CONSTRUCTION****Request**

Approval to utilize the City's master agreement with Grove Construction to complete renovations to the evidence area at the Police Department in the amount of \$70,153.13.

Explanation

Since the current Police Department building opened over 30 years ago, the evidence area has never expanded its footprint. As the Police Department staffing levels have grown through the years so has the collection of property and evidence. The evidence area currently contains over 80,000 pieces of property and evidence. While staff does purge items, new items are received almost as fast. This renovation would allow the evidence section to house property and evidence as well as allow for growth as needed in the future.

Grove Construction provided the Guaranteed Maximum Price (GMP) of \$70,153.13 for the physical renovation of the space. Grove Construction has a master agreement with the City for a 5 year term. The master agreement was executed on July 17, 2018. The Grove Construction GMP will accompany this request as well as the master agreement with the City.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00130206 506393	PD2038	Decrease	\$163,200.00	\$70,153.13

Financial Summary:

Adequate funding exists in the project to cover the renovation costs associated with the evidence area at the Police Department.

Recommendation

Staff recommends approval to utilize the master agreement with Grove Construction for the renovations of the evidence area at the Police Department in the amount of \$70,153.13.

REQUESTED CITY COMMISSION ACTION:

Approve

City of Kissimmee

Department: Police

Presenter:

Attachment(s):

1. Grove KPD Evidence Room Mod Quote (002) 4.28.21
2. Grove Construction Corp Contract

GROVE CONSTRUCTION

2340 PLEASANT HILL ROAD
KISSIMMEE, FL 34746

Page 468 of 600

Estimate

Date	Estimate #
4/20/2021	2037

Name / Address
City of Kissimmee Small Projects 2020 101 Church Street Kissimmee, FL 34741

Ship To
Kissimmee Police Department 8 N. Stewart Avenue Kissimmee, FL 34741 Room: Evidence Areas

				Project
Description	Qty	Rate	Total	
Demo - Remove existing walls, doors and casement as per plan. Remove existing acoustical ceiling as per plans. Remove flooring as per plan. Dumpster included.	1	11,620.00	11,620.00	
Ceilings & Coverings - Install New 2x2 acoustical ceiling tile and grid system as per plan	1	10,150.00	10,150.00	
Painting - Prep, patch and paint entire room and 5 door frames as per plan. Paint material to be Sherwin Williams ProMar 200.	1	8,985.20	8,985.20	
Floor Coverings - Install new flooring as per plan to include vinyl base and all adhesives for flooring install. Armstrong adhesive.	1	14,952.00	14,952.00	
Electrical & Lighting - Replace 2x4 florescent fixtures in evidence room as per plan and two additional fixtures in room 017. New fixtures will be LED.	1	8,876.00	8,876.00	
Heating & Cooling - Install new AC supply and return grilles as per plans.		3,080.00	3,080.00	
Specialties - Add/relocate 6 semi-recessed pendant sprinklers	1	5,850.00	5,850.00	
Specialties - Access Control to the Evidence Vault - Miller Electrical Company	1	4,359.93	4,359.93	
Doors Hardware on new door	1	1,280.00	1,280.00	
Contingency for additional Labor if needed.	1	1,000.00	1,000.00	
Quote includes building permits using drawings provided. Any additional engineering or drawings will be owner's responsibility.		0.00	0.00	
Quote excludes Fire alarm work, Engineered Drawings if needed.		0.00	0.00	
Total			\$70,153.13	

MASTER SERVICES AGREEMENT BETWEEN THE CITY OF KISSIMMEE AND CONSTRUCTION MANAGER AT RISK

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its City Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter designated as the "City") and **Grove Construction Corporation**, whose Federal Identification Number is: **86-1152290** (hereinafter designated as the "Construction Manager").

WITNESSETH:

WHEREAS, the City requires certain Construction Manager At Risk services to be performed in the City of Kissimmee; and,

WHEREAS, the City has solicited for these professional services via RFQ2018-008, an advertised request for proposals, and has received numerous responsive proposals thereto; and

WHEREAS, after review and consideration of all responsive proposals, the City intends to retain the Construction Manager identified above to provide such professional services under this Agreement; and

WHEREAS, the Construction Manager remains agreeable to providing the City the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the City and the Construction Manager (collectively, the "Parties") hereby agree, as follows:

ARTICLE 1

THE CONSTRUCTION TEAM, EXTENT OF AGREEMENT AND DEFINITIONS

The Construction Manager accepts the relationship of trust and confidence established between him and the City by this Agreement. The Construction Manager covenants with the City to furnish his/her best skill and judgment in furthering the interest of the City. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Services in the best way and the most expeditious and economical manner, consistent with the interests of the City, and the terms and conditions of the Contract Documents. Further, the Construction Manager acknowledges that (i) he/she has represented to the City that it has specific expertise in the planning, reviewing, management and construction of projects of similar size, cost and complexity and (ii) that such representation is a material inducement to the City to enter into this Agreement.

1.1 The Construction Team:

The Construction Manager, the City and the Architect/Engineer, collectively called the "Construction Team", shall work jointly during the Pre-Construction Phase and the Construction Phase. The Architect/Engineer and the Construction Manager shall communicate through the City's Representative, except as may otherwise be provided in this Agreement. The Construction Manager shall copy the City's Representative on all correspondence sent to or received from the Architect/Engineer or any of its consultants of which the City's Representative was not copied. The specific representatives of the Construction Team shall be identified further in the Pre-Construction Addendum and the GMP Addendum.

1.2 Extent of Agreement:

This Agreement, between the City and the Construction Manager, supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions/revisions of the Construction Documents and may be amended only by Change Order or through a duly executed amendment as authorized herein.

1.3 Definitions:

- 1.3.1 Project – shall be defined in each Pre-Construction Addendum issued under this Agreement.
- 1.3.2 Services – shall include: (1) all professional services described in the City’s Request for Proposals RFQ #2018-008, including all attachments and addenda; (2) all services described in the Construction Manager’s response thereto (collectively, “RFQ2018-008” is attached hereto as a composite **Exhibit “A”** and made a part of this Agreement); (3) all services described in Article 2 herein (but as may be specifically excluded by the City in the Pre-Construction Addendum); and (4) all Pre-Construction Phase Services and Construction Phase Services (the Construction Phase Services may also be referred to herein as the “Work”) as further set forth and described herein or in either the Pre-Construction Addendum, the GMP Addendum, or both.
- 1.3.3 Pre-Construction Addendum is attached hereto and incorporated herein as **Exhibit “B”** and shall be completed by the City upon the issuance of a Project.
- 1.3.4 GMP Addendum is attached hereto and incorporated herein as **Exhibit “C”** and shall be completed and executed by the City and the Construction Manager following the completion of Pre-Construction Phase Services and determination of a mutually-acceptable Guaranteed Maximum Price (“GMP”) and related terms.
- 1.3.5 Architect/Engineer – shall be determined for each individual Project and named in the Pre-Construction Addendum.
- 1.3.6 Contract Documents - The Contract Documents consist of this Agreement, the Exhibits hereto, and any duly executed amendments and/or addendums, including, without limitation, the Pre-Construction Addendum and the GMP Addendum, in addition to all plans and specifications for the construction of the Project (“Construction Documents”) that have been completed by the Architect/Engineer and approved in writing by the City’s Representative.
- 1.3.7 Punch List – A final list of items of Work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to Final Completion.
- 1.3.8 Schedule of Values - The schedule to be used as a basis for progress payments to be made to the Construction Manager by the City during performance of the Work, based on the then current percentage of progress of construction of the Work, subject to the review of the Architect/Engineer and the City’s Representative.
- 1.3.9 Subcontractor – A subcontractor is any person or entity performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with the Construction Manager. Construction Manager shall be solely responsible for and have control over the subcontractors.
- 1.3.10 Substantial Completion Date – The date, certified by the Architect/Engineer, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and as further delineated in Article 2, Section 2.5.1 so that the City can reasonably occupy or utilize the Project, or a designated portion thereof, for its intended use.

- 1.3.11 General Conditions - Those items that are not specific to any trade and are required for the construction of the Project.
- 1.3.12 City's Construction Budget: The City's Construction Budget shall be set forth in the completed GMP Addendum for each specific Project and shall include an estimated total of all three segments of the budget, including all Construction Manager Fees, Costs of the Work and the City's Allowance, as defined in Article 6. This acknowledgment of the City's Construction Budget is not to be construed as the Construction Manager's Guaranteed Maximum Price ("GMP").
- 1.3.13 *Intentionally omitted.*
- 1.3.14 Term—The "Term" of this Agreement shall commence on the Effective Date and continue for five (5) years thereafter, unless otherwise terminated as provided herein.
- 1.3.15 Allowance – Funds and time appropriated by the City for additional work which is not included in the contract document yet may be necessary for the completion of the Work. Any unused allowance funds shall be returned to the City by Change Order at the completion of the Project.
- 1.3.16 Contingency – those areas of work that are not at 100% design completion, at the time of GMP, for which additional monies will be allowed. A contingency dollar amount will be shown as a separate amount at the appropriate line item within the GMP and labeled as a contingency for that item of work. Any unused contingency funds shall be reassigned to the City's Buyout Allowance, as defined in Section 6.1.5.
- 1.3.17 Effective Date – shall be the date this Agreement is executed by the City Commission.
- 1.3.18 The City's Representative(s) may be any or all of the following: City Manager, Deputy City Manager, and/or the Facilities Management Division Director

ARTICLE 2

CONSTRUCTION MANAGER'S SERVICES

The CITY OF KISSIMMEE does hereby retain the Construction Manager to furnish, provide and perform the Services (as defined in Section 1.3.2), as those Services may be further specifically designated and authorized by the CITY in writing. Such authorization will be issued in the form of either 1) a Construction Manager Services Authorization (CSA) or a Construction Manager Purchase Order (CPO). All provisions of this Agreement apply to any CSA or CPO with full force and effect as if appearing in full within each such document. Each CSA and CPO will be accompanied by a completed Pre-Construction Addendum, and shall set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, if applicable, and completion date, and shall become effective upon the due execution.

The Services shall include, without limitation, those described or specified in this Article 2. Such services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Additionally, depending on the particular Project, some of the services described in this Article 2 may be specifically excluded by the City, as set forth in a completed Pre-Construction Addendum.

2.1 Project Management Information System (PMIS):

2.1.1 General:

- 2.1.1.1 Commencing immediately upon issuance by the City of a Pre-Construction Addendum and accompanying CSA or CPO, the Construction Manager shall implement and shall utilize throughout the life of the particular Project all subsystems of the Project Management Information System hereinafter referred to as PMIS.

- 2.1.1.2 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the City's Representative and the Architect/Engineer monthly.
- 2.1.1.3 If requested by the City's Representative, the Construction Manager shall conduct a comprehensive workshop for participants designated by the City's Representative and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the City's Representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect/Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the City's Representative and the Architect/Engineer, procedures for accomplishing the management control aspect of the Project.
- 2.1.1.4 The PMIS shall be described in terms of the following major subsystems:
 - 2.1.1.4.1 Narrative Reporting, on a monthly basis, and
 - 2.1.1.4.2 Schedule Control, on a monthly basis, and
 - 2.1.1.4.3 Cost Control, and estimating, and
 - 2.1.1.4.4 Project Accounting, and
 - 2.1.1.4.5 Accounting and Payment, on a monthly basis, and
 - 2.1.1.4.6 Action Reports.

2.1.2 Narrative Reporting Subsystem:

- 2.1.2.1 The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the City's Representative.
- 2.1.2.2 The Narrative Reporting Subsystem shall include the following reports:
 - 2.1.2.2.1 A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including all violations and deficiencies found by the applicable permitting authorities.
 - 2.1.2.2.2 A Monthly Cost Narrative describing the current cost status of the Project.
 - 2.1.2.2.3 A Monthly Scheduling Narrative summarizing the current status of the Master Project Schedule. This report shall include an analysis of the various Project schedules, a description of the critical path, tracking of approved original baseline schedule versus the actual progress of the Work and other analyses as necessary.
 - 2.1.2.2.4 A Monthly Accounting Narrative describing the current cost and payment status of the Project. This report shall relate current encumbrances and expenditures to the budget allocations.
 - 2.1.2.2.5 A Monthly Progress Report, during the Construction Phase, summarizing the work of the various subcontractors and consultants. This report shall include information from the weekly job site meetings, as applicable, such as General Conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations, and plans for the succeeding month.
 - 2.1.2.2.6 A Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.1.2.3 The reports outlined in subsection 2.1.2.2 shall be bound and submitted monthly during the Construction Phase and shall be current through the end of the preceding month. Copies shall be transmitted to the City's Representative and the Architect/Engineer and others as designated by the City's Representative with the monthly pay requisition. Additional copies of the Monthly Executive Summary, as outlined in subsection 2.1.2.2.1, shall be bound separately and distributed monthly, as directed by the City's Representative. The Daily Construction Diary, as outlined in subsection 2.1.2.2.6, shall be maintained at the Project Site Office Facility and be made available to the City's Representative and Architect/Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the City's Representative at the conclusion of the Project.

2.1.3 Scheduled Control Subsystem:

2.1.3.1 Master Project Schedule: Within 30 days following issuance of a CSA or a CPO, the Construction Manager shall submit, to the City's Representative for approval, a Master Project Schedule covering the Pre-Construction Phase and Construction Phase. The Master Project Schedule shall serve as the framework for the subsequent development of all detailed schedules. The Master Project Schedule shall be produced and updated monthly throughout the Project. No revisions, activity additions, activity deletions, or logic changes to the Master Project Schedule or any other schedule previously approved by the City, shall be made without the City's approval. Minor or immaterial deviations that do not affect key milestone dates may be amended if approved by the City's Representative.

2.1.3.2 Construction Schedule: With the submission of the GMP Proposal, the Construction Manager shall submit to the City's Representative, for approval, a Critical Path Construction Schedule (hereinafter "Construction Schedule") in sufficient detail to graphically depict the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Work, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Construction Schedule shall be based on a "Network Analysis System" and shall be the latest version of Microsoft Schedule, Primavera P3, or equivalent, as determined by the City's Representative. The City's Representative shall determine whether the Construction Schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a Construction Schedule as aforesaid shall be sufficient grounds for the City to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the Agreement or to withhold any payment.

2.1.3.3 Updated Construction Schedule: Following development and submittal of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Work, or at such earlier intervals as circumstances may require, update the Construction Schedule. The updated Construction Schedule will show the actual progress of the Work performed compared to the original baseline schedule, approved as set forth in Section 2.1.3.2, and all updates thereto as reflected in the updated Construction Schedule last submitted prior to submittal of each such monthly update. Each such update to the Construction Schedule shall be submitted to the City's Representative. Failure of the Construction Manager to update and submit the Construction Schedule as aforesaid shall be sufficient grounds for the City to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager, until a schedule or schedule update acceptable to the City's Representative is submitted.

2.1.3.4 When required by the City's Representative, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

2.1.3.4.1 Subcontractor Construction Schedules (Sub-networks) - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a

schedule which is more detailed than the Construction Schedule, taking into account the work schedule of the other subcontractors. The Construction Manager shall ensure each Subcontractor's Construction Schedule is incorporated into the Construction Manager's Construction Schedule, ensuring the necessary information is included to allow for construction planning and monitoring the performance of each subcontractor.

2.1.3.4.2 Final Completion Schedule -The Construction Manager shall jointly develop with the Architect/Engineer and The City's Representative, a detailed plan, inclusive of Punch Lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Final Completion. The Final Completion Schedule shall be produced and updated monthly and may be part of the Construction Schedule.

2.1.3.4.3 Utility Relocation Schedule – The Construction Manager shall jointly develop with the Architect/Engineer and The City's Representative a detailed plan, for any and all utility relocations required for successful completion of the Work. The Utility Relocation Schedule shall be produced and updated monthly, and may be part of the Construction Schedule.

2.1.3.4.4 Recovery Schedule - If any portion of the Master Project Schedule or any current updates fail to reflect the actual plan or method of operation of the Work, or a contractual milestone date is more than 15 days behind, the City's Representative may require that a Recovery Schedule for completion of the remaining work be submitted. The Recovery Schedule must be submitted within 7 calendar days of the request by the City's Representative. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining work by the required Agreement milestone date. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Agreement milestone dates.

2.1.3.4.5 Change Orders - When a Change Order is proposed, the City's Representative may require the Construction Manager to identify all logic changes as a result of the Change Order. The Construction Manager shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the Master Project Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, the Construction Manager will revise the Master Project Schedule. The logic changes required by the Change Order will be considered incidental to the Construction Manager's work. No separate payment will be made for the work required to identify all logic changes that result from the Change Order.

2.1.4 Budget Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and site elements, so that the Work will be completed at a cost which, together with all other Costs of the Work, will not exceed the City's Project Budget. Requirements of this subsystem may include the following submissions:

2.1.4.1 Estimate at the completion of schematic design; and

2.1.4.2 Estimate at the completion of 60% design development plans; and

2.1.4.3 Estimate at the completion of 100% design development plans; and

2.1.4.4 Estimate at the submission of the GMP Proposal.

2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to enable the City's Representative to monitor and control the funds available for the Project, cash flow, costs, Change Orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable, and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report may be further defined by the City's Representative.

2.1.5.1 A Payment Status Report - showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

2.1.5.2 Project Accounting Structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the Change Order history including Change Order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending Change Orders.

2.1.5.3 A Cash Flow Diagram - showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments and may be requested at earlier or more frequent intervals by the City's Representative.

2.1.5.4 A Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for General Conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

2.2 Project Manual: Upon the execution of this Agreement, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of Construction Manager, the City's Representative and Architect/Engineer; work flow diagrams; and strategy for bidding the Work. The Project Manual shall be completed and submitted to the Architect/Engineer and the City's Representative for their review of the format and content, and to the City's Representative for approval as a condition precedent to the first progress payment by City to Construction Manager for services provided in the Pre-Construction Phase. The Project Manual shall be updated as necessary, with the approval of City's Representative throughout the Pre-Construction and Construction Phases. A copy of the Project Manual, and any updates, shall be submitted separately to the City's Representative and Architect/Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the City's Representative and the Architect/Engineer. The Project Manual is merely an amplification and clarification of this Agreement. Any conflicts between the Project Manual and this Agreement shall be governed by the latter. The Project Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Project Manual shall include as a minimum the following sections:

2.2.1 Project Definition - The known characteristics of the Project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project or sub-projects.

2.2.2 Project Goals - The schedule, budget, physical, technical and other objectives for the Project.

2.2.3 Project Strategy - A narrative description of the Project delivery methods shall be utilized to accomplish the Project goals.

2.2.4 Project Work Plan - A matrix display of the program of Work to be performed by the Construction Manager, the Architect/Engineer and the City's Representative during each phase of the Project.

2.2.5 Project Organization - A summary organization chart showing the interrelationships between the City, the Construction Manager, the Architect/Engineer, and other supporting firms, organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect/Engineer, and the City's Representative, showing organizational elements participating in the Project shall be included.

2.2.6 Responsibility Performance Chart - A detailed matrix showing the specific responsibilities of the City, the Architect/Engineer, and Construction Manager. The Responsibility Performance Chart shall

indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Manager shall develop a similar chart for the personnel within his/her own organization who are assigned to the Project, and also for the personnel of the City and the Architect/Engineer from data supplied by each.

- 2.2.7 Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings, submittals, and Change Orders.
- 2.2.8 Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
- 2.2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from City, Construction Manager and Architect/Engineer, as well as from all subcontractors, sub-consultants and suppliers of any of them. This list shall be continuously updated by the Construction Manager throughout the Project duration, with Construction Manager distributing a copy of all updates to City's Representative and Architect/Engineer.
- 2.3 Pre-Construction Phase Services: The services to be provided under this Section 2.3 constitute the Pre-Construction Phase services. The parties acknowledge the Construction Phase may commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.
 - 2.3.1 Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Project and the City's Project Budget requirements, each in terms of the other.
 - 2.3.2 Consultation - The Construction Manager will jointly schedule and attend regular meetings with the City's Representative and Architect/Engineer. The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost – reducing alternatives, including assistance to the Architect/Engineer and City's Representative, in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of construction and early completion of the Project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required, in addition to items such as the identification, if necessary, of right-of-way to be acquired, outstanding permits and related issues and the status of utility relocations.
 - 2.3.3 Right of Way Acquisition – When requested, Construction Manager shall assist the City's Representative, in conjunction with the City Attorney's Office, with right of way acquisition, including but not limited to, obtaining appraisals, and assisting with the negotiation of purchase agreements. Construction Manager shall coordinate and develop in the Construction Documents all applicable conditions negotiated through the right-of-way acquisition process, including but not limited to such items as driveway transitions and modifications, fence relocations and other related items.
 - 2.3.4 Phased Construction - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect/Engineer and may make recommendations to the City's Representative with respect to dividing the Work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule, while the design is being completed. He/she shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, maintenance of traffic and utility relocation issues, status of right of way acquisition and community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the City's Representative.

- 2.3.5 Review Reports - Within 30 days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Article 2, Section 2.3. Promptly after completion of the review, he/she shall submit to the Construction Team, with copies to the Architect/Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he/she may deem appropriate, and all actions taken by the Architect/Engineer with respect to same, any comments he/she may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2, Section 2.3. Construction Manager shall not assume in any way the responsibilities of the Architect/Engineer, in particular, the responsibility of assuring that the Construction Documents are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules, and Regulations. However, if the Construction Manager recognizes that portions of the Construction Documents are at variance therewith, the Construction Manager shall include notice of same in the written report. THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.
- 2.3.6 Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the City's Representative and the Architect/Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise City's Representative and Architect/Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the City's Representative a schedule for procurement of the long-lead time items, which will constitute part of the Work as required to meet the Master Project Schedule. If such long-lead time items are procured by the City, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the City's acceptance of the Construction Manager's GMP proposal, all contracts for such items may be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.
- 2.3.7 Project Site Office Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Team to perform their respective duties in the management, inspection, and supervision of construction. Tangible personal property, otherwise referred to as Project Site Office Facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such Project Site Office Facilities, which are planned to become the property of the City at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing, and then analyzing which is the most cost effective over the useful life of the item. The Construction Manager shall present his evaluation with recommendation to the City's Representative for approval. When the Construction Manager wishes to supply Project Site Office Facilities from his/her own equipment pool, he/she shall first evaluate buy versus lease as discussed previously herein. If leasing is found to be the least expensive approach, then he/she may lease such Project Site Office Facilities from his/her own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained. For all such facilities purchased, which are to become the property of the City at the conclusion of the Project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. At the conclusion of the Project, the Construction Manager shall provide the City's Representative with a complete inventory of equipment that has been purchased for the City. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said

equipment has a title, said title shall be properly transferred to the City or to his designee. The Construction Manager is responsible for proper care and maintenance of all equipment while in his/her control. At the time of transfer to the City, the City may refuse acceptance of the equipment if the City determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse City for the cost of such item.

- 2.3.8 Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of work areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced. He/she shall submit to the Construction Team his/her recommendations as to needed requirements of this nature and as to the contract, or contracts, in which they should be included. The Construction Manager is totally responsible for all weather protection necessary to insure that all new construction is adequately protected from the normal inclement elements.
- 2.3.9 Market Analysis and Stimulation of Bidder Interest - The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project. The Construction Manager shall submit to the City's Representative a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the City's Representative and the Architect/Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the City market place and identify and encourage bidding competition. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.
- 2.4 Construction Phase - After the Construction Documents have been sufficiently completed by Architect/Engineer and approved by City's Representative for all the Work (or such portions thereof as may be designated by City in writing) and City and Construction Manager have agreed in writing upon the GMP to be paid to Construction Manager and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Manager shall fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all the terms and conditions of the Contract Documents.
 - 2.4.1 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent, full time, staff at the Project Site, authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors, and he shall provide no less than those personnel during the respective phases of construction that are set forth in Schedule 1 of the GMP Addendum. He/she shall not change any of those persons named in said Schedule unless mutually agreed to by the City's Representative and Construction Manager. In such case, the City's Representative shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
 - 2.4.2 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for his/her personnel, and shall provide this definition to the City's Representative and all other affected parties, such as the code inspectors of the permitting agencies, the subcontractors and the Architect/Engineer, to provide general direction of the Work and progress of the various phases and subcontractors. The City's Representative and Architect/Engineer may attend meetings between the Construction Manager and his/her subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts.
 - 2.4.3 Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the City, its representatives and the Architect/Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2, expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He/she shall also continue to provide current scheduling information,

direction and coordination regarding milestones, and beginning and finishing dates. He/she is also responsible for performance and the relationships of his/her work to the work of his/her subcontractors and suppliers, to enable them to perform their respective tasks, so that the development of construction progresses in a smooth and efficient manner in conformance with the Master Project Schedule.

- 2.4.4 Solicitation of Bids Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposals when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and, if directed by the City, for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

2.4.4.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the Work. The Construction Manager shall strive to receive at least three competitive bids per trade package. Should the nature of the trade package prohibit three competitive bids, the Construction Manager shall notify the City's Representative in writing as to the reason and offer suggestions, if any, to create trade interest.

2.4.4.2 The Construction Manager shall be responsible for coordinating with the Architect/Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.

2.4.4.3 The Construction Manager and the City's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect/Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the City's Representative and the Architect/Engineer and, upon receiving clarification or correction in writing, shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

- 2.4.5 Subcontracts Subject to Article 6 and, in accordance with Article 2, Section 2.4.4, the Construction Manager shall award subcontracts to the qualified low bidder after the Construction Manager and the City have reviewed each proposal and are satisfied that the subcontractor/supplier is qualified to perform the work. Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, complete copies of the Contract Documents to which the subcontractor will be bound by this Section 2.4.5 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

2.4.5.1 All subcontracts shall: (1) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to City by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to City at the election of City, upon termination of Construction Manager, (3) provide that City will be an additional indemnified party of the subcontract, (4) provide that City will be an additional insured on all insurance policies required to be provided by the subcontractor, except workman's compensation, (5) assign all warranties directly to City, and (6) identify City as an intended third-party beneficiary of the subcontract.

2.4.5.2 Unless otherwise expressly agreed to by City in writing, all subcontracts shall provide: **LIMITATION OF REMEDIES – NO DAMAGES FOR DELAY** The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the City or Architect/Engineer or

attributable to the City or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim. Each subcontract shall require that any claims by the subcontractor for delay must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the City, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

- 2.4.5.3 Subcontractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the City, under the agreement, by the parties to the extent of the work to be performed by the subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the City and Architect/Engineer under the Contract Documents, with respect to the Work to be performed by the subcontractor, so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with its sub-subcontractor.
- 2.4.5.4 Insurance requirements for subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the City. The Construction Manager shall be responsible to the City for the acts and omissions of his/her employees, agents, subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 2.4.5.5 If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP Addendum, the Construction Manager reserves the right to perform that portion of the Work, or negotiate for its performance for the specified line item lump sum amount or less.
- 2.4.6 A Public Construction Bond in the total amount of the GMP, along with all insurance certificates will be provided by the Construction Manager after approval of the GMP by the Commission, in the form attached hereto and incorporated herein as Exhibit "M". No work shall be performed until these documents are provided and the certificates are current.
 - 2.4.6.1 The Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.
 - 2.4.6.2 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, as amended by the audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department and A.M. Best rated A VIII or better.
 - 2.4.6.3 If the surety on any Bond furnished by the Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in any state or it ceases to meet the requirements of Section 2.4.6.2, the Construction Manager shall within ten (10) days thereafter substitute another Bond and surety, both of which must be acceptable to the City.
 - 2.4.6.4 All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Construction Manager shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Florida to issue bonds or insurance policies for the limits and coverage so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act.
- 2.4.7 Quality Control - The Construction Manager shall develop and maintain a written program, acceptable to the City's Representative and Architect/Engineer, to assure quality control of the construction. He/she shall supervise the work of all subcontractors, providing instructions to each when their work

does not conform to the requirements of the Construction Documents, and he/she shall continue to exert his/her influence and control over each subcontractor to ensure that corrections are made in a timely manner, so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of Work and conformance with the requirements of the Construction Documents, the City's Representative shall be the final judge of performance and acceptability, subject to the dispute provisions of this Agreement.

2.4.8 Submittals and Substitutions- Construction Manager shall carefully examine the Contract Documents for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. The Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to the Architect/Engineer for review and action. Within 14 days, the Architect/Engineer will transmit them back to the Construction Manager, who will then issue the submittals to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of it by the subcontractors. The Construction Manager shall advise the Architect/Engineer in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable the Architect/Engineer to prioritize requests coming from the Construction Manager. The Construction Manager shall advise the City's Representative and Architect/Engineer in writing when timely response is not occurring on any of the above.

2.4.8.1 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Architect/Engineer for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and at least of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement services shall be indicated. The application also shall contain an itemized estimate of all costs or savings that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Architect/Engineer in evaluating the proposed substitute. Architect/Engineer may require Construction Manager to furnish, at Construction Manager's expense, additional data about the proposed substitute.

2.4.8.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Architect/Engineer, if Construction Manager submits sufficient information to allow Architect/Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Architect/Engineer shall be the same as those provided herein for substitute materials and equipment.

2.4.8.3 Architect/Engineer shall be allowed a reasonable time within which to evaluate each proposed substitute. Architect/Engineer and City's Representative shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without City's and Architect/Engineer's prior written acceptance which shall be evidenced by

either a Change Order or an approved submittal. City may require Construction Manager to furnish, at Construction Manager's expense, a special performance guarantee or other surety with respect to any substitute. The cost of such guarantee may be reimbursable from the City's Owner Allowance or Buyout Allowance funds, provided that this cost is presented with the proposed substitute. If City rejects the proposed substitute, at City's direction, City may require Construction Manager to reimburse City for the charges of Engineer and Engineer's consultants for evaluating the proposed substitute.

- 2.4.9 Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the City and the City's Representative, including the Architect/Engineer.
- 2.4.10 Permits - The Construction Manager shall secure and pay for all permits and/or licenses which are customarily secured by a General Contractor. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. Cost for all re-inspections of Work found defective and subsequently repaired, shall be borne by the Construction Manager, unless such cost is not a result of negligence on the part of the Construction Manager.
- 2.4.11 Project Administration - The Construction Manager shall provide Project Administrative functions during construction to assure proper documentation, including, but not limited to, such things as the following:
 - 2.4.11.1 Job Meetings – Hold weekly progress and coordination meetings, or more or less frequently, if required, to provide for the timely completion of the Work. In addition, a regular monthly Project status meeting will be held between the Architect/Engineer, City's Representative and Construction Manager. The meetings shall serve as a tool for planning of work and enforcing schedules and for establishing procedures and responsibilities.
 - 2.4.11.2 Shop Drawing Submittals/Approvals – Check shop drawings and implement procedures to be approved by City's Representative for submittal and transmittal to the Architect/Engineer and City's Representative of such drawings for action, and closely monitor their submittal and approval process.
 - 2.4.11.3 Material and Equipment Expediting – Closely monitor material and equipment deliveries, follow-up procedures on supplier commitments of all subcontractors, and maintain a material and equipment expediting log.
 - 2.4.11.4 Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
 - 2.4.11.5 Document Interpretation (RFI) - Refer all questions for interpretation of the Construction Documents to the Architect/Engineer with a copy to the City's Representative.
 - 2.4.11.6 Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the City's Representative and the Architect/Engineer including information on the subcontractors' work, and the percentage of completion. Keep a daily log available to the City, the Engineer and the permitting authority's inspectors.
 - 2.4.11.7 Subcontractors' Progress - Prepare periodic punch lists for the subcontractors' work, including unsatisfactory or incomplete items and schedules for their completion.
 - 2.4.11.8 Start-Up - With the City's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.

- 2.4.11.9 Safety – Provide a safety program for the Project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform Work in accordance with the best acceptable practice.
- 2.4.11.10 Record Drawings - The Construction Manager shall monitor the progress of his/her own forces and his/her Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect/Engineer, who will prepare the final record drawings. The Construction Manager shall continuously review “As-Built” Drawings and marked up progress prints to provide as much accuracy as possible.
- 2.4.11.11 Systems Maintenance and Instruction - The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey those to the City in such a manner as to promote their usability. The Construction Manager shall provide City’s operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training shall be videotaped by Construction Manager for subsequent presentation to City’s operations and maintenance personnel.
- 2.4.11.12 Administrative Records - Construction Manager shall maintain in a safe place at the Project Site Office Facility, one record copy and one permit set of the Contract Documents, including, but not limited to, all Construction Documents, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Architect/Engineer, in good order and annotated to show all changes made during construction. The record Contract Documents shall be updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that have been made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated record Contract Documents. As a condition precedent to City’s obligation to make a monthly progress payment, Construction Manager shall provide evidence, satisfactory to City’s Representative and Architect/Engineer, that Construction Manager is fulfilling its obligation to update the record Contract Documents. All buried and concealed items, within the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than 2 permanent features. The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings, shall be available to City’s Representative and Architect/Engineer for reference. In addition, the Construction Manager shall be required to maintain at the Project Site Office Facility on a current basis, electronic and/or copies of files and records such as, but not limited to the following:

- Contracts [subcontracts]
- Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost Estimates
- Bulletin Quotations

Lab Test Reports
 Insurance Certificates and Bonds
 Contract Changes
 Construction Change Directives
 Permits
 Purchase Orders
 Material Purchase Delivery Logs
 Technical Standards
 Design Handbooks
 "As-Built" Marked Prints
 Operating & Maintenance Instruction
 Daily Progress Reports
 Monthly Progress Reports
 Correspondence Files
 Transmittal Records
 Inspection Reports
 Bid/Award Information
 Bid Analysis and Negotiations
 Punch Lists
 PMIS Schedule and Updates
 Suspense (Tickler) Files of Outstanding Requirements
 Project Manual
 Job Photographs

2.5 Final Completion:

2.5.1 Substantial Completion: When the entire Work (or any portion thereof designated in writing by City) is ready for its intended use, Construction Manager shall notify City's Representative and Architect/Engineer in writing that the entire Work (or such designated portion) is substantially complete and request that Architect/Engineer prepare a Certificate of Substantial Completion (or a Certificate of Partial Substantial Completion), a copy of which is attached as **Exhibit "D"**. Said written notice from Construction Manager shall include a proposed punch list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, City's Representative, Construction Manager and Architect/Engineer shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If City's Representative and Architect/Engineer do not consider the Work (or designated portion) substantially complete, Architect/Engineer shall notify Construction Manager in writing giving the reasons therefore. If City and Architect/Engineer consider the Work (or designated portion) substantially complete, Architect/Engineer shall deliver to Construction Manager the Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a final punch list of items to be completed or corrected by Construction Manager before final payment. Failure to include an item on the final Punch List does not waive City's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment.

2.5.2 Final Acceptance: When Construction Manager believes it has fully performed all of the Services, including all punch list items, Construction Manager shall deliver to City's Representative all items listed on **Exhibit "G"**, which includes, but is not limited to, a written Release and Affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be in conformance with **Exhibit "E"** and shall be delivered to City's Representative by Construction Manager at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Architect/Engineer and City's Representative shall promptly inspect the Work to determine if all of the Work has been completed and is ready for Final Acceptance by City. If City's Representative and Architect/Engineer determine Construction Manager has completed the entire Work and performed all of the Services, City's

Representative shall promptly approve the Final Completion Certificate of the Project, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Services have been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Manager, as noted in the final Certificate for Completion, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment has been satisfied. Neither the final payment nor any retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached to the Agreement as **Exhibit "E"**, (2) consent of surety to final payment, and (3) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by City. City reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Architect/Engineer may have issued its recommendations. Until the Construction Manager completes all of its contractual obligations, with the exception of the Warranty period, neither the final payment nor any retainage shall become due and payable.

The City may occupy or take control of portions of the project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2, Sections 2.4.11.8, 2.4.11.10, 2.5.1 and 2.6 have been completed to the City's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Substantial Completion.

2.6 Warranty and Corrective Period

- 2.6.1 The Construction Manager shall warrant that all materials and equipment included in the Work will be new, except where indicated otherwise in Contract Documents, and that the Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Construction Documents.
- 2.6.2 The Construction Manager shall collect and deliver to the City's Representative any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the City's Representative and the Architect/Engineer, a warranty inspection eleven (11) months after the date of Substantial Completion of the Project. Construction Manager shall obtain and assign to City all express warranties given to Construction Manager by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager further warrants to City that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to City and shall not include any exclusions, exceptions or modifications except to the extent approved by City in its sole discretion.
- 2.6.3 In addition to the express warranties provided for in Sections 2.6.1 and 2.6.2, and all other rights and remedies available to City at law or in equity, including any implied warranties City may be entitled to as a matter of law, Construction Manager shall promptly correct, upon receipt of written notice from City's Representative, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by City in its sole discretion to present an immediate threat to safety or security, City shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse City for all costs and expenses incurred by City in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved.
- 2.6.4 With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Contingency Funds may be utilized to correct such damage

provided that damage was not caused by negligence on the part of the Construction Manager. Construction Manager's warranty excludes remedy for damage or defect caused by City's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by City (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by City (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

ARTICLE 3

CITY'S RESPONSIBILITIES

3.1 City's Information:

The City shall provide full information regarding the requirements for the Project.

3.2 City's Representative:

The City shall designate in writing any additional representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. In no event, shall any delegation of authority be contrary to State, County or City laws or codes. Such designations as of the date hereof are set forth in Section 1.3.18. Functions that this Agreement provides, which will be performed by the City, can be delegated by written notice to the Construction Manager from the City. The designation(s) of City's Representative, as set forth in Section 1.3.18, may be amended from time to time by the City, pursuant to written notice to the Construction Manager of such amendment. The Construction Manager shall be entitled to rely on directions (and it shall be required to follow directions) from the City's Representative within the authority conferred by the Commission in this Agreement or any Amendment or Change Order to this Agreement. The City of Kissimmee Commission hereby authorizes the City's Representative to: (1) act as the Board's agent and execute documents associated with the Project. Examples of these documents are Notices of Commencement, Certificates of Substantial and Final Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the City; and (4) issue a duly authorized memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by City's Representatives shall be binding on the City. The City's Representative does not have the authority to authorize work beyond the scope of the Contract Documents.

The City additionally authorizes the City Manager, or his designee, in conjunction with the City's Representative, to authorize individual changes in the Work up to *\$50,000.00*. Said changes shall be funded from the City's Allowance and shall not cause an increase to City's Project Budget.

3.3 Design Engineer and Engineer's Agreement:

The City shall retain an Architect/Engineer for design and to prepare Construction Documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the City and the Architect/Engineer, a copy of which will be furnished to the Construction Manager.

3.4 Site Survey and Reports:

The City shall provide for the site of each Project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

3.5 Approvals and Easements:

The City shall pay for necessary approvals, properties, easements, assessments and charges required for the construction, use or acceptance of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The City shall furnish such legal services as may be necessary for providing the items set forth in Article 3, Section 3.5, and such auditing services as it may require.

3.7 Construction Documents:

The Construction Manager will be furnished a reproducible set of all copies of the Construction Documents reasonably necessary and ready for printing.

3.8 Cost of Surveys & Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the City's expense. Construction Manager shall rely upon the accuracy and completeness thereof as noted in the various reports and surveys. Additional reports or surveys deemed to be necessary by the Construction Manager shall be obtained by the Construction Manager.

3.9 Project Fault Defects:

If the City becomes aware of any fault or defect in the Project or non-conformance with the Construction Documents, the City shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.10 Funding:

The City shall furnish, in accordance with the established Master Program Schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence performance of any Services, unless authorized in writing by the City.

3.11 Permitting & Code Inspections:

The City and Construction Manager shall coordinate with the appropriate permitting authorities.

ARTICLE 4

CONTRACT TIME

- 4.1 The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Final Completion of the Work is referred to hereafter as the "Contract Time". With respect to the Construction Phase Services, the "Construction Phase Commencement Date" shall be established in the GMP Addendum. No portion of the Work, with respect to the Construction Phase Services, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by City in writing. The GMP Addendum shall also include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Manager. The "Substantial Completion" date shall be established in terms of calendar days after the Construction Phase Commencement Date. Unless noted otherwise, the Final Completion Date is 30 (thirty) days after Substantial Completion. In the event Construction Manager and City fail to reach an agreement on the Contract Time, City may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent

such services were expressly approved in advance and in writing by City; but Construction Manager shall not be entitled to any further or additional compensation from City, including, but not limited to, damages or lost profits on portions of the Work not performed.

- 4.2 Liquidated Damages. City and Construction Manager recognize that, since time is of the essence for this Agreement, City will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified in the GMP Addendum, as said time may be adjusted as provided for herein. In such event, the total amount of City's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public in the City of Kissimmee, Florida. It is hereby agreed that it is appropriate and fair that City receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the required time period, City shall be entitled to assess, as liquidated damages, but not as a penalty, a specified amount for each Project, which shall be stated in the GMP Addendum, for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represent a fair and reasonable estimate of City's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

ARTICLE 5

CONTRACT TIME EXTENSIONS

- 5.1 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, utility work being performed within the Project limits, or by unusually severe weather conditions by comparison with the ten year Osceola County, Florida average not reasonably anticipatable, Construction Manager shall notify City's Representative and Architect/Engineer, in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a Contract Time Extension. Contract Time Extension requests shall be evaluated through the Change Order process.
- 5.2 If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum, or petroleum related products, or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall: (i) stop Work in the area affected, and (ii) report the condition to City's Representative in writing. If the Work is so stopped in excess of ten (10) days and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Manager shall indemnify the City and hold City harmless for any costs incurred by the City with respect to such material.
- 5.3 **NO DAMAGES FOR DELAY.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the City and Architect/Engineer may be responsible, in whole or in part, shall relieve Construction Manager of his/her duty to perform, or give rise to any right to damages or additional compensation from the City. Construction Manager's sole remedy, if any, against the City will be the right to seek an extension to the Contract Time and the payment of additional Costs of the Work and associated increase in the Construction Manager's Fee, as allowed pursuant to Article 6. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. In no event shall the City be liable to Construction Manager, whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

ARTICLE 6

CONTRACT AMOUNT

- 6.1 In consideration of the full and faithful performance by the Construction Manager of the covenants in this Agreement, City agrees to pay, or cause to be paid, to Construction Manager the following amounts (hereinafter collectively referred to as "Contract Amount"), in accordance with the terms of this Agreement and with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "K"**. The Hourly Rate Schedule identifies all job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.
- 6.1.1 Pre-Construction Phase Services - For all Pre-Construction Phase Services enumerated in this Agreement, including, but not limited to, providing value engineering, reviewing documents for constructability, assisting and meeting with the Owner and the Design professionals, preparing cost estimates and schedules and preparing the draft GMP Proposal, Construction Manager shall receive a fixed amount agreed to, between the parties, for each Project.
- 6.1.2 Construction Phase Services – With respect to the Construction Phase Services to be provided by Construction Manager, City shall: 1) reimburse Construction Manager for the Cost of the Work; and 2) pay the Construction Manager a Construction Manager's Fee to be negotiated as part of the GMP Addendum process.
- 6.1.2.1 Construction Manager's Fee: The Construction Manager's Fee shall be Construction Manager's total compensation for the Construction Manager's profit on the Cost of the Work, as defined below. Construction Manager agrees to provide City with a GMP Proposal for the total sum of the Construction Manager's Fee, plus the Cost of the Work, plus the Construction Manager's Contingency, after the Construction Manager determines the Construction Documents are sufficiently complete.
- 6.1.2.2 The GMP Proposal shall be based upon actual subcontractor cost proposals with the various subcontractors. Further, the proposal shall be broken down into the categories and level of detail required by City's Representative. Construction Manager agrees that all its books, records and files, with respect to its development of the GMP Proposal, shall be open to City for review and copying. The final GMP Proposal shall be mutually agreed upon by City and Construction Manager and shall be set forth in the GMP Addendum (**Exhibit "C"**). The GMP Addendum shall further identify the drawings, specifications (Schedule 1 of the GMP Addendum) and other descriptive documents (Schedule 4 of the GMP Addendum) upon which the GMP is based. The Construction Manager guarantees that in no event shall the sum of the Construction Manager's Fee, the total Cost of the Work, and the Construction Manager's Contingency exceed the GMP. The Construction Manager acknowledges multiple GMP Addendums may be required for the portions of the Project to support the Project phasing and schedule.
- 6.1.2.3 The amount to be paid for Construction Manager's Fee shall be stated in the GMP Addendum. The Construction Manager's Fee shall be paid proportionally to the ratio of the Cost of the Work completed. The balance of the Construction Manager's Fee shall be paid at Final Completion. If construction is authorized for a portion of the Project, the Construction Manager's Fee shall be paid proportionally to the amount of the Work authorized by the City.
- 6.1.2.4 In the event Construction Manager and City fail to reach an agreement on the GMP, City may elect to terminate this Agreement. In the event of any such termination, Construction

Manager shall be entitled to receive that portion of the Contract Amount attributable to the completed Pre-Construction Phase Services; but Construction Manager shall not be entitled to any further additional compensation from City, including but not limited to damages or lost profits on portions of the Work not performed. Construction Manager may be required to continue to provide all other agreed upon Pre-Construction services.

- 6.1.2.5 The Construction Manager will not be due any increases in the Construction Manager's Fee on increases in the GMP value that do not exceed a cumulative total of a specified amount for each Project which shall be stated as a "nominal overage" in the GMP Addendum. Should the GMP value be increased by more than such nominal overage amount under the terms of Article 7 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Construction Manager's Fee will be (5) five percent of that portion of the accumulative increases in the GMP value that exceed the GMP value by more than such nominal overage amount.
- 6.1.3 Cost of the Work. The Phrase "Cost of the Work" shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Services. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of City only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection 6.1.3:

6.1.3.1 Construction Phase Costs: The following items constitute the elements that can be included in the Construction Phase Cost calculations.

- 6.1.3.1.1 Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with City's written agreement, at off-site workshops;
- 6.1.3.1.2 Wages of Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site as specified in Schedule 1 to the proposed GMP;
- 6.1.3.1.3 Wages of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with City's written agreement;
- 6.1.3.1.4 Wages of Construction Manager's supervisory, technical, and administrative personnel when assigned to this Project and specifically working on this Project in the Construction Manager's administrative or home office, as specified in Schedule 1 to the proposed GMP;
- 6.1.3.1.5 Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts;
- 6.1.3.1.6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
- 6.1.3.1.7 Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof;
- 6.1.3.1.8 Minor expenses at the site, such as internet, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.

6.1.3.2 Subcontract and Material Costs. All Subcontractor Costs will be documented and signed by Subcontractor invoices and all material costs will be documented by copies of invoices. Subcontract and Material Costs may also be referred to as “Reimbursable Costs”. All requests for payment of expenses eligible for reimbursement under the terms of this Agreement, unless otherwise specifically stated herein, shall be reimbursed per the City’s Reimbursable Schedule that is attached hereto as **Exhibit “J”** and made a part of this Agreement. Reimbursable Costs shall include:

- 6.1.3.2.1 Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager’s own forces in the performance of the work, at rental charges consistent with those prevailing in the area;
- 6.1.3.2.2 Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction project. General Liability will be cost at a fixed rate of __%, to be stated in the GMP Addendum of the final Contract Amount, adjusted to include any previously deducted City Direct Purchase amounts, and Construction Manager bonds will be cost at a fixed rate of __%, to be stated in the GMP Addendum. The premium stated will be substantiated with industry standard documentation. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. **There shall be no Construction Phase Fee on this item;**
- 6.1.3.2.3 Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles, provided they have resulted from causes other than the negligent misconduct of Construction Manager;
- 6.1.3.2.4 Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable;
- 6.1.3.2.5 The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship, or other causes due to the negligence of the Construction Manager or his/her subcontractors or suppliers. No costs shall be paid by the City to the Construction Manager for any expenses made necessary to correct defective workmanship, or to correct any work not in conformance with the Plans and Specifications, or to correct any deficiency or damage caused by negligent acts by the Construction Manager;
- 6.1.3.2.6 Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of Subcontractors, except in the case of a Subcontractor's default;
- 6.1.3.2.7 Costs for trash and debris control and removal from the site;
- 6.1.3.2.8 Costs incurred due to an emergency affecting the safety of persons and property;
- 6.1.3.2.9 Legal costs reasonably and properly resulting from prosecution of the Project for the City, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations: 1) The City approved, in writing, incurring such costs in advance, which approval shall be in the City’s sole discretion; and 2) the legal costs were not incurred as result of the Construction Manager’s own negligence or default. This paragraph does not provide for payment of legal costs

incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders, or in enforcing the obligations of this Agreement;

- 6.1.3.2.10 Transportation outside of the City of Kissimmee for those personnel employed directly for the project, not including relocation expenses. Such transportation must be extraordinary and be approved in advance by the City's Representative, and will be in accordance with the Construction Manager's standard personnel policy;
- 6.1.3.2.11 Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the project;
- 6.1.3.2.12 Costs for watchman and security services for the project, if necessary;
- 6.1.3.2.13 Costs for efficient logistical control of the Project, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space;
- 6.1.3.2.14 Costs for such temporary facilities and temporary protection during construction, as approved by the City, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software;
- 6.1.3.2.15 Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work;
- 6.1.3.2.16 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities (including Project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;
- 6.1.3.2.17 Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others, shall be subject to the prior written approval of City's Representative;
- 6.1.3.2.18 Costs, fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
- 6.1.3.2.19 Cost of Public Information Programs or other neighborhood functions hosted by Construction Manager at the direction of City's Representative;
- 6.1.3.2.20 Costs of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Agreement;
- 6.1.3.2.21 Cost of documentation, inspection and testing as required for the preparation of the F.OT Final Estimate and implementation of the FDOT Contractor Quality Control process;

6.1.3.3 Costs Not To Be Reimbursed. The Cost of the Work shall not include the following items: Except as provided in Article 6, Section 6.1.3.1:

6.1.3.3.1 Temporary living and travel expenses of employees who are not relocated, but are assigned to the Project;

6.1.3.3.2 Except as provided in the Fringe Benefits rate included in Article 6, Section 6.1.3.1.4, expenses of Construction Manager's principal office and offices other than the Project site office;

6.1.3.3.3 Overhead and general expenses, except as may be expressly included in Article 6, Section 6.1.3.1 and 6.1.3.2;

6.1.3.3.4 Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work;

6.1.3.3.5 Rental costs of machinery and equipment, except as specifically provided in Article 6, Section 6.1.3.2.1;

6.1.3.3.6 Except as expressly provided in Article 6, Section 6.1.3.2.5, costs due to the negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied;

6.1.3.3.7 Any costs not specifically and expressly described in Article 6, Section 6.1.3.1 and 6.1.3.2 above;

6.1.3.3.8 Construction Manager is responsible, without reimbursement from City, for re-inspection fees and costs; to the extent such re-inspections are due to the negligence of the Construction Manager;

6.1.3.4 Adjustments in Construction Phase Costs: For changes in the Project as provided in Article 7, the Construction Phase Costs shall be adjusted as follows:

6.1.3.4.1 The Construction Manager shall be paid an additional amount, subject to negotiation, if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss, excluding any condition that may have been caused from negligent acts by the Construction Manager.

6.1.3.4.2 Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs or Construction Manager's Fee paid to the Construction Manager, unless such delays are as defined in Article 7.

6.1.4 City's Allowance: The GMP Addendum shall include the City's Owner Allowance, which permits the City to authorize the Construction Manager to perform work which may not have been specifically addressed in the original contract documents, but which the City deems necessary for the project. The City's Allowance is also intended to protect against price increases between the GMP Addendum and the completion of the 100% Construction Documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction, and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the City's Allowance prior to the release of funds by the City. Documentation for use of the City's Allowance shall be determined by the Construction Team, included in the Project Manual and displayed monthly in

the PMIS. The Architect/Engineer shall verify the actual costs. The maximum dollar amount of permitted Allowance Work shall be 5% of the GMP or \$250,000, whichever is less. The City Manager or his designee can approve the use of the City's Allowance up to \$50,000 per occurrence. When allowance funds are utilized for changes and/or additions to the work, the CM shall submit a written request to the City's Representative, in the same manner as a change order request. The City's Representative shall prepare an Allowance Authorization Release, in form attached here to as Exhibit "I" to this Agreement.

The GMP Addendum may, at the City's discretion, also contain allowance time, not to exceed ten (10) percent of the total amount of time allotted for the work. This time shall be used for any unforeseen changes to the work which may cause the time to be extended and will be granted via an Allowance Authorization Release, approved by the City Manager or his designee.

6.1.4.1 Following the full execution of the GMP Addendum, at a point mutually agreed upon between the City's Representative and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds may be taken from the City's Allowance. If the net amount of the buyout results in a savings, the savings will be assigned to the City's Buyout Allowance.

6.1.5 The City's Buyout Allowance shall be created by savings generated by the subcontractor buyout, unused contingency funds, and also by reductions in scope that otherwise could reduce the GMP. The intent of this City's Buyout Allowance is to allow funds already approved within the GMP Addendum to remain and be used at the City's discretion for scope issues that may become required and/or desired during the course of the project. Authorizations up to \$25,000, for the use of the City's Buyout Allowance, will be granted by the City Manager, or his designee. Authorizations for more than \$25,000 will be required to be obtained from the Board.

ARTICLE 7

CHANGE IN THE PROJECT

7.1 Change Orders:

- 7.1.1 City shall have the right, at any time during the progress of the Work, to increase or decrease the Work. Promptly after being notified of a change, but in no event more than 14 days after its receipt of such notification (unless City's Representative has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the Architect/Engineer, no addition or changes to the Work shall be made except upon written order of City, and City shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order.
- 7.1.2 A Change Order, in form attached here to as Exhibit "H" to this Agreement, shall be prepared by City's Representative, reviewed by Architect/Engineer and Construction Manager, and executed promptly by the parties after an agreement is reached between Construction Manager and City, concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as City and Construction Manager shall mutually agree.
- 7.1.3 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of any unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably would not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall

provide City's Representative with prompt written notice thereof before conditions are disturbed and in no event later than 48 hours after first observance of such conditions. City's Representative and Architect/Engineer shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, City will acknowledge and agree to an equitable adjustment to the Contract Amount or Contract Time, or both, for such Work. If City's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Document or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Contract is justified, City shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by City must be made within 48 hours after Construction Manager's receipt of the written determination of City's Representative. If City's Representative and Construction Manager cannot agree on an adjustment to the Contract Amount or Contract Time, the parties shall comply with the dispute resolution procedure set forth in the Contract Documents.

- 7.1.4 The increase or decrease in the GMP as set forth in the GMP Addendum resulting from a change in the Project shall be determined in one or more of the following ways: 1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and City's Representative, or 2) by unit prices stated in the Agreement or subsequently agreed upon.
- 7.1.5 If none of the methods set forth in Article 7, Section 7.1.4 is agreed upon, the Construction Manager, provided he/she receives a written order signed by the City, shall promptly proceed with the Work involved. The increase or decrease in the GMP shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate, without prior written approval by the City's Representative. In such case, and also under Article 7, Section 7.1.4 above, the Construction Manager shall keep and present, in such form as the City's Representative may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work as outlined in Article 6., Section 6.1.3.2 .
- 7.1.6 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the City or the Construction Manager, the applicable unit prices and GMP shall be equitably adjusted.
- 7.1.7 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop Work in the area affected and report the condition to the City in writing. City shall thereafter, as soon as reasonably possible, conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste, or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the City to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.

- 7.1.8 The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to the changes clause herein.
- 7.1.9 *Intentionally omitted.*
- 7.1.10 Claims for Additional Cost or Time: All claims for additional cost or time, in excess of what is addressed in Article 6.1.4, shall be made by request for a Change Order submitted as provided in this Article. The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the City or the Architect/Engineer or of any employee of either or by any separate Construction Manager employed by the City or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the City pending resolution of disputes, and such delay extends the completion date, then the dates for completion may be equitably adjusted. Only delays, which are determined to extend the critical path of the schedule for constructing the project, will result in a time extension.
- 7.1.11 Minor Changes in the Project: The City will have authority to order minor changes in the Project not involving an adjustment in the Contract Amount or Contract Time and not inconsistent with the intent of the Construction Documents. Such changes shall be effected in writing. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the City and Architect/Engineer.
- 7.1.12 Emergencies: In any emergency affecting the safety of persons or property, the Construction Manager shall act at his/her discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided herein. Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project Site. If conditions are such that it is safe to return to the Project site, Construction Manager shall give Architect/Engineer written notice within 48 hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Architect/Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the 48-hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek and adjustment to the Contract Amount or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to City all accidents relating to the Work that result in any personal injury or property damage.

ARTICLE 8

PAYMENTS TO THE CONSTRUCTION MANAGER

8.1 Progress Payments

- 8.1.1 Construction Manager's monthly Applications for Payment shall be in a form, as shown in Exhibit "F", and shall contain such detail and backup as City reasonably may require. Such detail and backup shall include documentation of actual payments made.
- 8.1.2 At the time it submits its GMP Proposal to City, Construction Manager shall submit to City's Representative and Architect/Engineer, for their review, a Schedule of Values based upon the GMP Proposal. The Schedule of Values will be based on the major items of work. The Schedule of Values will be structured so that the costs of the major items of work can be allocated to the various elements of work. The Schedule of Values shall be updated for the current month Change Orders and submitted each month to Architect/Engineer along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit "F".
- 8.1.3 If the payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at an approved location off site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that City has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City's interest therein, all of which shall be subject to City's satisfaction.
- 8.1.4 Construction Manager shall submit a notarized original of its monthly Application for Payment to City's Representative, or Architect/Engineer, as directed by the City's Representative, on a monthly basis, on or before the 25th of each month. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Within seven calendar days after receipt of each Application for Payment, Architect/Engineer shall submit to City's Representative, a certification of the Application for Payment in the amount recommended by Architect/Engineer as being due and owing Construction Manager. Upon approval by City's Representative, payment shall be made to Construction Manager in accordance with the Florida Prompt Payment Act Statute 218.735. As a condition to the application for the monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within 30 days after receipt of information that a change to the Construction Documents has occurred.
- 8.1.5 Ten percent (10%) retainage shall be held on all payments until the Construction Phase is 50% complete, except when approved by the City, certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. After 50% completion, the amount of retainage shall be reduced from 10% to 5%, in accordance with Section 255.078, Florida Statutes. Retainage shall not be withheld on services or fees set forth in Article 6, Section 6.1.2 and 6.1.3.
- 8.1.6 Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.
- 8.1.7 Each Application for Payment shall be accompanied by a Release and Affidavit showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. City shall not be required to make payment until and unless these affidavits are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which City has paid Construction Manager, Construction Manager agrees to refund such money to City.

8.2 Payments Withheld

Architect/Engineer shall review each Application for Payment submitted by Construction Manager and shall make recommendations to City's Representative as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Both Architect/Engineer and City's Representative shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, and City's Representative may withhold any payments otherwise due Construction Manager under this Agreement, to the extent it is reasonably necessary, to protect City from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against City attributable to the negligence of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. City shall have the right, but not the obligation, to take any corrective action City deems appropriate to cure any of the above noted items, at the Construction Manager's expense, if Construction Manager has not started with a cure, to the City's reasonable satisfaction, of any of the above noted items within five working days after Construction Manager's receipt of written notice from City.

8.3 Final Payment.

City shall make final payment to Construction Manager provided the Work is finally accepted by City in accordance with Article 2, Section 2.5.2, and provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished City with a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as **Exhibit "E"**, as well as a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or City. Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against City arising out of this Contract or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor the payment by City shall be deemed to be a waiver of City's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by City's Representative or Architect/Engineer at the time of final inspection. The Project will be considered complete when all Work has been completed and accepted by the City Commission. The Construction Manager will then be released from further obligation except as set forth in Section 2.6 Warranty.

ARTICLE 9

INSURANCE, WAIVER OF SUBROGATION, AND INDEMNITY

9.1 Construction Manager's Insurance:

9.1.1 The Construction Manager shall not commence any construction work in connection with this Agreement until he/she has obtained all of the following types of insurance and such insurance has been approved by the City, nor shall the Construction Manager allow any subcontractor to commence work on his/her subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida with an A.M. Best & Company rating of no less than A. The insurance company must have a current A.M. Best & Company financial rating of Class VIII or higher. The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida. The insurance company must have been in such insurance business continuously for not less than 5 years prior to the date of the execution of this Agreement.

- 9.1.2 Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his/her employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the City, for the protection of employees not otherwise protected. Employers' liability shall be set at \$1,000,000/1,000,000/1,000,000.
- 9.1.3 Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:
- 9.1.3.1 Construction Manager's Comprehensive General, \$1,000,000 Each (\$2,000,000 aggregate) Liability Coverages, Bodily Injury Occurrence, & Property Damage Combined Single Limit
 - 9.1.3.2 Automobile Liability Coverages, \$1,000,000 Each Bodily Injury & Property Damage occurrence, Combined Single Limit
 - 9.1.3.3 Excess Liability, Umbrella Form \$2,000,000 Each Occurrence, Combined Single Limit
 - 9.1.3.4 Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis. There shall not be an EFIS Exclusion Endorsement on any general liability policy. The Products and Completed operations portions of the General Liability shall extend for a period of two years after the Final Acceptance of the Project by the City.
- 9.1.4 Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of his/her subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his/her subcontractors in his/her policy, as specified above.
- 9.1.5 *Intentionally omitted.*
- 9.1.6 "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- 9.1.7 Broad Form Property Damage Coverage, Products & Completed Operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- 9.1.8 Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- 9.1.9 Certificate of Insurance - The City shall be furnished proof of coverage of Insurance as follows:
- 9.1.9.1 Certificate of Insurance form will be furnished to the City. These shall be completed and signed by an authorized Resident Agent. This Certificate shall be dated and show: the name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

- 9.1.9.2 Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section.
- 9.1.9.3 The City of Kissimmee, a Municipal Corporation of the State of Florida, is to be named as an Additional Insured under all policies except for Worker's Comp.
- 9.1.9.4 The insurance evidenced by the certificate shall be primary and non-contributory to any other insurance of the certificate holder.
- 9.1.9.5 The Notice to Proceed will not be given until the Construction Manager has obtained all the insurance and Bonds required by the Contract Documents and such insurance has been approved by the City.
- 9.1.11 The Construction Manager shall not be required to provide Builder's Risk or Architects' and Engineers' Professional Liability Insurance unless specifically requested by the City. The City has Builder's Risk coverage and will provide the Construction Manager with appropriate Certificate of Insurance upon request. The City's Builder's Risk policy does not insure the Construction Manager's tools, machinery or equipment that is stored at the Project site. The Construction Manager should provide insurance in the form of an equipment floater for the Construction Manager's tools and equipment and the City should be named as an additional insured on the Construction Manager's policy with an appropriate waiver of subrogation as to any claims the Construction Manager or the Construction Manager's insurer may have against the City arising from the storage of the Construction Manager's tools and equipment. The Construction Manager shall be responsible for the first \$5,000 of any claim against the City's Builder's Risk policy.
- 9.1.12 The Construction Manager shall not allow a subcontractor to work on a project without the subcontractor carrying its own Workers Compensation and Liability insurance or the Construction Manager covering the subcontractor under its policies. This requirement is the same for each succeeding sub-tier contractor. The Construction Manager shall provide proof of such coverage to the City upon the City's request.

9.2

Waiver of Subrogation:

- 9.2.1 The Construction Manager shall ensure all insurance policies it maintains in fulfillment of its obligations under this Agreement shall contain a waiver of subrogation against the City, its officials, employees, agents and consultants. Waiver of subrogation will apply to the general liability and workers compensation policies. The City, a Municipal Corporation of the State of Florida, shall be named as an additional insured with respect to liability arising from all Services and work performed under this Agreement for automotive and general liability policies of insurance, and such policies should so state in the Certificate of Insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 9.2.2 The Construction Manager hereby waives all rights against the City for loss or damage to any equipment used in connection with a Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

9.3 Indemnification of City

Construction Manager, to the maximum extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to City) protect and hold the City, and its officers, employees and agents harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses (including, without limitation, attorneys' fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) whatsoever including, but not limited, to those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Construction Manager to comply with applicable laws, rules or regulations, (ii) the breach by Construction Manager of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of Construction Manager's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Construction Manager, its professional associates, subcontractors, agents, and employees; provided, however, that Construction Manager shall not be obligated to defend or indemnify the City with respect to any such claims or damages arising out of the City's sole negligence. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees including alleged injury to the business or any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include, without limitation, the costs incurred by the City, its agents, officials and employees in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees, costs and expenses incurred by reason of the assertion of any such claim against the City, its agents, officials or employees. The Construction Manager expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided by the Construction Manager, shall in no way limit the Construction Manager's responsibility to release, indemnify, keep and save harmless and defend the City as herein provided. The intention of the parties is to apply and construe broadly in favor of the City the foregoing provisions subject to the limitations, if any, set forth in the Florida Statutes. The Construction Manager shall obtain an endorsement or other affirmative coverage from its insurance policies required by this Agreement insuring the Construction Manager's contractual obligations under this Section. The obligations imposed by this Section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10

TERMINATION OF THE AGREEMENT AND THE CITY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

10.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the City's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the City, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

10.2 City's Right to Perform Construction Manager's Obligations and Termination by City for Cause:

10.2.1 If the Construction Manager fails to perform any of his/her obligations under this Agreement, including any obligation he assumes to perform work with his/her own forces, the City may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the City of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

- 10.2.2 The City may, without prejudice to any right or remedy and after giving the Construction Manager and his/her surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he/she may deem expedient if: the Construction Manager is adjudged bankrupt, or if he/she makes a general assignment for the benefit of his/her creditors, or if a receiver is appointed on account of his/her insolvency, or if he/she persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a breach of a material provision of the Agreement. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished, nor shall he be relieved from his/her obligations assumed under Article 6. Reasonable terminal expenses incurred by the City may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).
- 10.2.3 The City may terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method he/she may deem expedient, without prejudice to any right or remedy and after giving the Construction Manager and his/her surety, if any, seven (7) days written notice, during which period Construction Manager fails to allow access to the City. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he/she be relieved from his/her obligations assumed under Article 7. Reasonable termination expenses incurred by the City may be deducted from any payments left owing the Construction Manager (excluding moneys owed to the Construction Manager for subcontract work).
- 10.3 Termination by City Without Cause:
- 10.3.1 The City may, at any time, terminate this Agreement for the City's convenience and without cause.
- 10.3.2 Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:
- 10.3.2.1 Cease operations as directed by the City in the notice;
 - 10.3.2.2 Take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
 - 10.3.2.3 Terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for Work directed to be performed prior to the effective date of termination stated in the notice.
- 10.4 In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable fee, as defined in Article 6, overhead and profit on the Work performed.

ARTICLE 11

ASSIGNMENT AND GOVERNING LAW

- 11.1 Neither the City nor the Construction Manager shall assign his/her interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 11.2 This Agreement shall be governed by the Laws of the State of Florida. Venue shall be as specified in Section 13.2.3. The parties waive all rights to trial by jury.

ARTICLE 12

NOTICE OF CLAIM: WAIVER OF REMEDIES

- 12.1 The City's liability to the Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the City of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions, subject to Section 13.4 herein:
 - 12.1.1 All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - 12.1.2 The Construction Manager must submit a Notice of Claim to City within 20 days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
 - 12.1.3 Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the City its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the City shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the City is prejudiced by the failure of the Construction Manager to give notice.
- 12.2 After receipt of a Request for Change Order, the City, in consultation with the Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 12.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 6, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the City or the Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 12.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 5% for profit. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in such work, and eliminate any other remedies for claim, for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 13

MISCELLANEOUS

13.1 Harmony:

The Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and his/her Subcontractors for work on each Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of each Project.

The Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

13.2 Dispute Resolution:

13.2.1 All claims, disputes and other matters in question (hereinafter referred to as a "Controversy") between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.

13.2.2 Should either the City or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement between said parties, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

13.2.3 Any litigation between the City and Construction Manager (which term for the purposes of this subparagraph shall include the Construction Manager's surety), whether arising out of any claim as described in Article 12, or Controversy arising out of this Agreement or any breach thereof, shall be brought, maintained and pursued only in the Ninth Judicial Circuit Court in and for Osceola County, Florida, or in United States District Court, Middle District of Florida, Orlando Division. Construction Manager consents and submits to the jurisdiction of such courts and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

13.3 Construction Manager's Project Records and City's Auditing Rights

The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by State and Federal Law and shall be made available to the City or his authorized representative at mutually convenient times.

Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of 3 years from the date of termination of this Agreement or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. City, and any duly authorized agents or representatives of City, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by City. Further, City, and any duly authorized agents or representatives of City, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents.

If at any time, City conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged City, Construction Manager shall pay to City the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than \$10,000.00, which is defined as the total aggregate of City's reasonable audit costs incurred as a result of its audit of Construction Manager, City may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and City. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to City within 30 business days of its receipt of City's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

This Article, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Contract.

13.4 **LIMITATION OF LIABILITY**

IN NO EVENT, SHALL THE CITY BE LIABLE TO THE CONSTRUCTION MANAGER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY THE CITY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

13.5 **Cleanup and Protections**

Construction Manager agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project Site clean, City has the right, after providing a 24-hour written notice, to perform any required clean up and to backcharge the Construction Manager for the costs of such clean up. At the completion of the Work, Construction Manager shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project Site clean and ready for occupancy by City.

Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

13.6 **Ownership of Documents**

All analyses, reference data, bills, completed reports, or any other form of written instrument or document created or resulting from the Construction Manager's performance of the Services pursuant to this Agreement shall become the property of the City after payment is made to the Construction Manager for such instruments or documents.

13.7 **No Contingent Fees**

The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager 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 Construction Manager, any fee, commission, percentage, gift, or other

consideration contingent upon or resulting from award of or making of the Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

13.8 *Intentionally omitted.*

13.9 Public Entity Crimes

The Construction Manager understands and acknowledges that this Agreement will be voidable by the City in the event the conditions stated in Florida Statutes, Section 287.133 relating to conviction for a public entity crime apply to the Construction Manager.

13.10 Non-Discrimination

The Construction Manager warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

13.11 All Prior Agreements Superseded

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. No modification, amendment or alteration in the terms or conditions contained herein, unless otherwise stated herein, shall be effective unless agreed to and executed in writing by both parties to this Agreement in a form acceptable to the City.

13.12 Independent Contractor

Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Construction Manager (including its officers, employees, and agents) as the agent, representative, or employee of the City for any purpose, or in any manner, whatsoever. The Construction Manager is to be and shall remain forever an independent contractor with respect to all Services performed under this Agreement. The Construction Manager shall not pledge the City's credit or make the City a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Construction Manager shall have no right to speak for or bind the City in any manner.

13.13 Intentionally Omitted

13.14 Compliance with Laws and Regulations

In providing all Services pursuant to this Agreement, the Construction Manager shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such Services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Construction Manager.

13.15 Notices

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written

notice delivered in compliance with the provisions of this Section 13.15. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For City:

City of Kissimmee
Purchasing Department
101 Church Street
Kissimmee, Florida 34741
Attention: Purchasing Director

For Construction Manager:

Grove Construction Corporation
2340 Pleasant Hill Road
Kissimmee, FL 34741
Attention: Karen Khan, President

13.16 Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement; any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

13.17 Annual Appropriations

Construction Manager acknowledges that during any fiscal year the City shall not expend money, incur any liability, or enter into any agreement which by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, any agreement, verbal or written, the City may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The City may enter into agreements whose duration exceeds one year; however, any such agreement shall be executory only for the value of the services to be rendered which the City agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the City's performance and obligation to pay the Construction Manager under this Agreement is contingent upon annual appropriations being made for that purpose.

13.18 Unauthorized Alien(s)

The Construction Manager shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the City's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the City, the Construction Manager shall also deliver a completed and executed counterpart of the attached "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" form.

13.19 Construction Manager Representations - The Construction Manager hereby represents and warrants the following to the City:

- 13.19.1 Construction Manager is a corporation that is duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida;
- 13.19.2 Construction Manager's performance under this Agreement will not violate or breach any contract or agreement to which the Construction Manager is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation;
- 13.19.3 Construction Manager has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms;
- 13.19.4 Construction Manager now has and will continue to maintain all licenses and approvals required for conducting its business, and that it will at all times conduct its business activities in a reputable manner;
- 13.19.5 Construction Manager has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement;
- 13.19.6 Construction Manager has the personnel and experience necessary to perform all Services in a professional and workmanlike manner;
- 13.19.7 Construction Manager shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances;
- 13.19.8 Construction Manager shall, at no additional cost to the City, re-perform those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement;
- 13.19.9 Each individual executing this Agreement on behalf of the Construction Manager is authorized to do so.

13.20 Waiver

A waiver by either City or Construction Manager of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

ARTICLE 14

DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT PURCHASE PROCEDURES FOR PUBLIC PROJECTS

14.1 Direct Materials Acquisition by City - Supply Bonds:

- 14.1.1 Each Subcontractor shall include Florida State Tax and other applicable Sales Taxes for all material, supplies and equipment included in the Subcontractor's bid.
- 14.1.2 The City may, if not prohibited by Law, exercise a right to purchase directly various construction materials, supplies and equipment that may be part of the Subcontract. Any materials purchased by the City shall be referred to as "City Purchased Materials" and the responsibilities of both the City and the Construction Manager relating to such City Purchased Materials shall be governed by the terms and conditions of the "Sales Tax Exempt Purchasing Procedures for Public Projects", which

shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.

- 14.1.3 The City will issue its own Purchase Orders directly to the vendor. The City's Purchase Order shall contain or be accompanied by the City's Certificate of Entitlement and must include the City's name, address, and exemption number. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager, for prices negotiated by the Construction Manager or Subcontractor. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the City and will coordinate the purchase of the materials in a timely manner so as not to negatively impact on the performance of the construction activity of the project.
 - 14.1.4 The Subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the City shall not relieve the Subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the Subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning, and the management of all applicable warranties.
 - 14.1.5 Notwithstanding the transfer of City Purchased Materials by the City to the Subcontractor's possession, the City shall retain title to any and all City Purchased Materials.
 - 14.1.6 The Contractor shall maintain products liability insurance, which shall include City Purchased Materials, as required for the normal practice of general contracting.
 - 14.1.7 The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the City and the Construction Manager. The premium cost for this supply bond shall be included in the sub-contractor's cost. Verifying that a designated material supplier can furnish a supply bond (if required) will be the responsibility of the Subcontractor. City reserves the right to waive the requirement of providing a supply bond at the discretion of City.
 - 14.1.8 If the State of Florida assesses any Sales Tax penalties and/or interest against the Construction Manager or any of its Subcontractors or Material Suppliers relating to the direct acquisition of materials and/or equipment by City as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by City to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.
- 14.2 Sales Tax Exempt Purchasing Procedures for Public Projects:
- 14.2.1 The Subcontractor has included Florida State Sales and other applicable taxes in his/her bid for material, supplies and equipment. The City, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the form of Purchase Order attached herewith.
 - 14.2.2 Any equipment, materials or supplies directly purchased by the City that are included in the Subcontractor's contract shall be referred to as City Purchased Materials and the responsibilities of both the City/Public Entity and the Subcontractor relating to such City Purchased Materials shall be governed by the terms and conditions of these procedures.

- 14.2.3 Material suppliers shall be selected by the Subcontractor awarded the subcontract.
- 14.2.4 The Subcontractor has included the price for all construction materials plus applicable taxes in their bid. City purchasing of construction materials, if selected, will be administered on a deductive Change Order basis, the Subcontract amount shall be reduced by the net undiscounted amount of these Purchase Orders, plus all sales tax.
- 14.2.5 The Subcontractor shall provide the Construction Manager a list of all intended suppliers, vendors, and material men for consideration as City Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values and the Project schedule. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.
- 14.2.6 Upon request from Construction Manager, and in a timely manner, the Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the City and the Construction Manager, to specifically identify the materials, which City has, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:
- A. the name, address, telephone number and contact person for the material supplier
 - B. manufacturer or brand, model or specification number of the item
 - C. quantity needed as estimated by Subcontractor
 - D. the price quoted by the supplier for the materials identified therein, including freight
 - E. any sales tax associated with such quote
 - F. delivery dates as established by Subcontractor
- 14.2.7 Subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors; i.e., warranties, retainage, etc. The Purchase Order Requisition Forms are to be submitted to the City's designated representative no less than seven (7) days prior to the need for ordering such City Purchased Materials, in order to provide sufficient time for City review and approval and to assure that such Directly Purchased Materials may be directly purchased by City and delivered to the Project site without any delay to the Project.
- 14.2.8 After receipt of the Purchase Order Requisition Form, the City's Representative shall prepare Purchase Orders for equipment, materials or supplies which the City chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Subcontractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The City's Purchasing Director or their designated representative shall be the approving authority for the City on Purchase Orders in conjunction with City Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the City Purchased Materials on the delivery date provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The City's Purchase Orders shall contain or be accompanied by the City's Certificate of Entitlement and must include the City's name, address, and exemption number.
- 14.2.9 In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the City, through the Construction Manager, one or more deductive Change Orders, referencing the full value of all City-Purchased materials to be provided by each supplier from whom the City elected to purchase material directly, plus all sales tax savings associated with such materials in the Subcontractor's bid to the Construction Manager.
- 14.2.10 All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.

- 14.2.11 Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by the City in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the City due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor shall provide all services required for the unloading, handling and storage of materials through installation. The Subcontractor agrees to indemnify and hold harmless the City from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor.
- 14.2.12 As City Purchased Materials are delivered to the jobsite, the Subcontractor and the Construction Manager, as City's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Subcontractor shall assure that each delivery of City Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the City or Construction Manager may require. The Construction Manager, as City's Representative, shall verify in writing to the City the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the City through the Construction Manager for payment. The invoice shall be thereupon furnished to the City for processing and payment in the manner as all other City invoices are processed. The City shall have the right to assign City personnel to verify and audit the accuracy of all City Purchased Material documents.
- 14.2.13 The Subcontractor shall ensure that City Purchased Materials conform to the Specifications and determine, prior to incorporation into the Work, if such materials are patently defective, whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Subcontractor discovers defective or nonconformities in the City Purchased Material upon such visual inspection, the Subcontractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the City, through the Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporates City Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Subcontractor shall be responsible for all damages to the City resulting from the Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective, or nonconforming, the Subcontractor shall promptly take action to remedy the defect or nonconformance so as not to delay the work.
- 14.2.14 The Subcontractor shall maintain records of all City Purchased Materials it incorporates into the Work from the stock of City Purchased Materials in its possession. The Subcontractor shall account monthly to the City, through the Construction Manager, for any City Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials, which have been incorporated into the Work.
- 14.2.15 The Subcontractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
- 14.2.16 Notwithstanding the transfer of City Purchased Materials by the City to the Subcontractor's possession, the City shall retain title to any and all City Purchased Materials.

- 14.2.17 The transfer of possession of City-Purchased Materials from the City to the Subcontractor shall constitute a bailment for mutual benefit of the City and the Subcontractor. The City shall be considered the bailor and the Subcontractor the bailee of the City Purchased Materials. City Purchased Materials shall be considered returned to the City for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. The Bailee shall have the duty to safeguard, store and protect all City Purchased Materials.
- 14.2.18 The City shall purchase and maintain insurance pursuant to the requirements set forth in the City and Construction Manager Agreement which shall be sufficient to protect against any loss of or damage to City Purchased equipment, materials or supplies. Such insurance shall cover the full value of any City Purchased Materials not yet incorporated into the Project from the time the City first takes title.
- 14.2.19 The City shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, City Purchased Materials.
- 14.2.20 On a monthly basis, the Subcontractor shall be required to review invoices submitted by all suppliers of City Purchased Materials delivered to the Project site during that month and either concur or object to the City's issuance of payment to the suppliers, based upon the Subcontractor's records of materials delivered to the site and any defects in such materials.
- 14.2.21 In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the City, through the Construction Manager, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. Upon receipt and verification of the appropriate documentation, the City shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered and remitted directly to the supplier. The Subcontractor agrees to assist the City to immediately obtain partial or final release of lien waivers as appropriate.
- 14.2.22 At the end of the Project, any refund for surplus materials returned to suppliers, plus applicable sales tax savings amount, shall be credited with an additive Change Order to the Subcontractor's agreement with the Construction Manager. Salvage materials shall be the property of the City and stored or removed from the site by the Subcontractor at the City's direction.

ARTICLE 15

PUBLIC RECORDS

15.1 Public Record Law

- 15.1.1 The Construction Manager acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement.
- 15.1.2 The Construction Manager shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

- 15.1.3 The Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the City.
- 15.1.4 Questions regarding the application of Chapter 119, Florida Statutes, to the Construction Manager's duty to provide public records relating to this Agreement, shall be directed to the City's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

15.2 Record Retention

- 15.2.1 Upon completion of the project, the Contractor shall transfer, at no cost, to the City all public records in possession of the Construction Manager or keep and maintain public records required by the City to perform the service. If the Construction Manager transfers all public records to the City upon completion of the project, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Unless otherwise directed by the City, all records will be transferred at the conclusion of the Project.
- 15.2.2 All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 15.2.3 If the Construction Manager keeps and maintains public records upon completion of the Project, the Construction Manager shall meet all applicable requirements for retaining public records.

15.3 Record Requests

- 15.3.1 A request to inspect or copy public records relating to a City's contract for services upon notice to the Contractor of the request, the Contractor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- 15.3.2 If the Construction Manager does not comply with the City's request for records, such failure shall constitute a material breach and this Agreement shall terminate upon notice by the City. Failure to provide the public records to the City within a reasonable time may also subject the Construction Manager to penalties under Florida Statutes §119.10
- 15.3.3 If a civil action is filed against the Construction Manager to compel production of public records relating to the City's contract for services, the Court shall assess and award against the Construction Manager the reasonable costs of enforcement, including reasonable attorney's fees, if:
 - A. The Court determines that the Construction Manager unlawfully refused to comply with the public records request within a reasonable time; and
 - B. At least eight (8) business days before filing the action, the Plaintiff provided written notice of the public records request, including a statement that the Construction Manager has not complied with the request, to the City and the Construction Manager.
 - C. A notice complies with subparagraph 15.3.3(b) if it is sent to the City's custodian of public records and to the Construction Manager at the address listed on its Contract with the City or to the Construction Manager's registered agent. Such notices shall be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

- D. A Contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

EXHIBIT 16
INCORPORATION OF EXHIBITS

The following Exhibits, attached hereto, are hereby fully incorporated herein by this specific reference as if fully set forth in the body of this Agreement:

Exhibit "A"	-	RFQ2018-008 and Construction Manager's Proposal
Exhibit "B"	-	Pre-Construction Services Addendum
Exhibit "C"	-	GMP Addendum
Exhibit "D"	-	Certificate of Substantial Completion
Exhibit "E"	-	Release and Affidavit
Exhibit "F"	-	Application for Payment Form
Exhibit "G"	-	Final Payment Request Checklist / Certificate of Final Completion
Exhibit "H"	-	Change Order
Exhibit "I"	-	Allowance Authorization Release
Exhibit "J"	-	Schedule of Reimbursables
Exhibit "K"	-	Hourly Rate Schedule
Exhibit "L"	-	Affidavit Certification Immigration Laws
Exhibit "M"	-	Public Construction Bond

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

LINDA HANSELL, Clerk

By: Linda Hansell

City Clerk

Date Signed by Chairman: 7/17/2018

**CITY OF KISSIMMEE, a Municipal Corporation
of the State of Florida**

By: [Signature]

Mayor / Chairman

City of Kissimmee Commission

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
Assistant City Attorney

7/17/18
Date

ATTEST:

By: Indira Nauth

Indira Nauth

Printed Name

Grove Construction Corporation
a Florida corporation

By: Karen Khan

PRESIDENT

Title

ITEM 7.L**POLICE DEPARTMENT SERGEANT'S OFFICE RENOVATION BY GROVE CONSTRUCTION****Request**

Approval to utilize the City's master agreement with Grove Construction to complete renovations to the sergeant's office at the Police Department in the amount of \$55,360.62.

Explanation

As the Police Department staffing increases with the needs of the public, the number of supervisors in the Patrol division will grow as well. This renovation will allow for the projected growth outlined in the 5 year capital program submitted each of the past two years to City staff.

Grove Construction provided the Guaranteed Maximum Price (GMP) of \$55,360.62 for the physical renovation of the space. Grove Construction has a master agreement with the City for a 5 year term. The master agreement was executed on July 17, 2018. The Grove Construction GMP will accompany this request as well as the master agreement with the City.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00130206 506393	PD2035	Decrease	\$63,200.00	\$55,360.62

Financial Summary:

Adequate funding exists in the project to cover the renovation costs associated with Grove Construction.

Recommendation

Staff recommends approval to utilize the master agreement with Grove Construction for the renovations to the sergeant's office at the Police Department in the amount of \$55,360.62.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police
Presenter:

City of Kissimmee

Attachment(s):

1. Grove Construction KPD Equipment Room Mod Quote NO FLOORING MATERIALS 5. 3. 21
2. Grove Construction Corp

GROVE CONSTRUCTION

2340 PLEASANT HILL ROAD
KISSIMMEE, FL 34746

Estimate

Date	Estimate #
4/20/2021	2036

Name / Address
City of Kissimmee Small Projects 2020 101 Church Street Kissimmee, FL 34741

Ship To
Kissimmee Police Department 8 N. Stewart Avenue Kissimmee, FL 34741 Room: Sergeant / Equipment Issue

				Project
Description	Qty	Rate	Total	
Demo - Remove existing wall and doors and frames as shown on drawings. Remove existing servicing window as shown on drawings. Demo existing acoustical ceiling as per plans. Remove existing flooring. Dumpster included.	1	9,542.00	9,542.00	
Interior Walls - Enclose door. Enclose window area with 8" x 8" x 16" CMU blocks, metal framing members to be 3 5/8" 25 ga. metal studs with 1/2" gypsum board each side and 3" sound batts as per drawing.	1	3,670.00	3,670.00	
Ceilings & Coverings - Install New 2x2 acoustical ceiling tile and grid system	1	11,010.00	11,010.00	
Painting - Prep, patch and paint entire room including new CMU infill on corridor side, Clerk Room 004 north wall corner to corner where gypsum infill is located, 1 door frame both sides two coats in Sergeant Room 002. Paint materials to be Sherwin Williams ProMar 200.	1	6,606.00	6,606.00	
Floor Coverings, LABOR ONLY, Install new carpeting and vinyl base in room. ALL materials to be provided by owner including but not limited to flooring, base adhesive and accessories.	1	7,707.00	7,707.00	
Electrical & Lighting - Three new direct circuits from panel to new office cubicles. Re-route electrical to new office configuration. Remove and replace all ceiling fixtures with new LED fixtures	1	13,825.62	13,825.62	
Quote includes building permits using drawings provided and 1 year warranty. Any additional engineering or drawings will be owner's responsibility.		0.00	0.00	
Allowance for HVAC. Final price will be based on scope and quote.	1	1,000.00	1,000.00	
Allowance for Fire Sprinkler. Final price will be based on scope and quote.	1	1,000.00	1,000.00	
OT allowance. Additional labor allowance. Final price will be based on scope and quote.	1	1,000.00	1,000.00	
Total			\$55,360.62	

**MASTER SERVICES AGREEMENT
BETWEEN THE CITY OF KISSIMMEE AND CONSTRUCTION MANAGER
AT RISK**

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its City Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter designated as the "City") and **Grove Construction Corporation**, whose Federal Identification Number is: **86-1152290** (hereinafter designated as the "Construction Manager").

WITNESSETH:

WHEREAS, the City requires certain Construction Manager At Risk services to be performed in the City of Kissimmee; and,

WHEREAS, the City has solicited for these professional services via RFQ2018-008, an advertised request for proposals, and has received numerous responsive proposals thereto; and

WHEREAS, after review and consideration of all responsive proposals, the City intends to retain the Construction Manager identified above to provide such professional services under this Agreement; and

WHEREAS, the Construction Manager remains agreeable to providing the City the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the City and the Construction Manager (collectively, the "Parties") hereby agree, as follows:

ARTICLE 1

THE CONSTRUCTION TEAM, EXTENT OF AGREEMENT AND DEFINITIONS

The Construction Manager accepts the relationship of trust and confidence established between him and the City by this Agreement. The Construction Manager covenants with the City to furnish his/her best skill and judgment in furthering the interest of the City. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Services in the best way and the most expeditious and economical manner, consistent with the interests of the City, and the terms and conditions of the Contract Documents. Further, the Construction Manager acknowledges that (i) he/she has represented to the City that it has specific expertise in the planning, reviewing, management and construction of projects of similar size, cost and complexity and (ii) that such representation is a material inducement to the City to enter into this Agreement.

1.1 The Construction Team:

The Construction Manager, the City and the Architect/Engineer, collectively called the "Construction Team", shall work jointly during the Pre-Construction Phase and the Construction Phase. The Architect/Engineer and the Construction Manager shall communicate through the City's Representative, except as may otherwise be provided in this Agreement. The Construction Manager shall copy the City's Representative on all correspondence sent to or received from the Architect/Engineer or any of its consultants of which the City's Representative was not copied. The specific representatives of the Construction Team shall be identified further in the Pre-Construction Addendum and the GMP Addendum.

1.2 Extent of Agreement:

This Agreement, between the City and the Construction Manager, supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions/revisions of the Construction Documents and may be amended only by Change Order or through a duly executed amendment as authorized herein.

1.3 Definitions:

- 1.3.1 Project – shall be defined in each Pre-Construction Addendum issued under this Agreement.
- 1.3.2 Services – shall include: (1) all professional services described in the City’s Request for Proposals RFQ #2018-008, including all attachments and addenda; (2) all services described in the Construction Manager’s response thereto (collectively, “RFQ2018-008” is attached hereto as a composite **Exhibit “A”** and made a part of this Agreement); (3) all services described in Article 2 herein (but as may be specifically excluded by the City in the Pre-Construction Addendum); and (4) all Pre-Construction Phase Services and Construction Phase Services (the Construction Phase Services may also be referred to herein as the “Work”) as further set forth and described herein or in either the Pre-Construction Addendum, the GMP Addendum, or both.
- 1.3.3 Pre-Construction Addendum is attached hereto and incorporated herein as **Exhibit “B”** and shall be completed by the City upon the issuance of a Project.
- 1.3.4 GMP Addendum is attached hereto and incorporated herein as **Exhibit “C”** and shall be completed and executed by the City and the Construction Manager following the completion of Pre-Construction Phase Services and determination of a mutually-acceptable Guaranteed Maximum Price (“GMP”) and related terms.
- 1.3.5 Architect/Engineer – shall be determined for each individual Project and named in the Pre-Construction Addendum.
- 1.3.6 Contract Documents - The Contract Documents consist of this Agreement, the Exhibits hereto, and any duly executed amendments and/or addendums, including, without limitation, the Pre-Construction Addendum and the GMP Addendum, in addition to all plans and specifications for the construction of the Project (“Construction Documents”) that have been completed by the Architect/Engineer and approved in writing by the City’s Representative.
- 1.3.7 Punch List – A final list of items of Work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to Final Completion.
- 1.3.8 Schedule of Values - The schedule to be used as a basis for progress payments to be made to the Construction Manager by the City during performance of the Work, based on the then current percentage of progress of construction of the Work, subject to the review of the Architect/Engineer and the City’s Representative.
- 1.3.9 Subcontractor – A subcontractor is any person or entity performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with the Construction Manager. Construction Manager shall be solely responsible for and have control over the subcontractors.
- 1.3.10 Substantial Completion Date – The date, certified by the Architect/Engineer, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and as further delineated in Article 2, Section 2.5.1 so that the City can reasonably occupy or utilize the Project, or a designated portion thereof, for its intended use.

- 1.3.11 General Conditions - Those items that are not specific to any trade and are required for the construction of the Project.
- 1.3.12 City's Construction Budget: The City's Construction Budget shall be set forth in the completed GMP Addendum for each specific Project and shall include an estimated total of all three segments of the budget, including all Construction Manager Fees, Costs of the Work and the City's Allowance, as defined in Article 6. This acknowledgment of the City's Construction Budget is not to be construed as the Construction Manager's Guaranteed Maximum Price ("GMP").
- 1.3.13 *Intentionally omitted.*
- 1.3.14 Term – The "Term" of this Agreement shall commence on the Effective Date and continue for five (5) years thereafter, unless otherwise terminated as provided herein.
- 1.3.15 Allowance – Funds and time appropriated by the City for additional work which is not included in the contract document yet may be necessary for the completion of the Work. Any unused allowance funds shall be returned to the City by Change Order at the completion of the Project.
- 1.3.16 Contingency – those areas of work that are not at 100% design completion, at the time of GMP, for which additional monies will be allowed. A contingency dollar amount will be shown as a separate amount at the appropriate line item within the GMP and labeled as a contingency for that item of work. Any unused contingency funds shall be reassigned to the City's Buyout Allowance, as defined in Section 6.1.5.
- 1.3.17 Effective Date – shall be the date this Agreement is executed by the City Commission.
- 1.3.18 The City's Representative(s) may be any or all of the following: City Manager, Deputy City Manager, and/or the Facilities Management Division Director

ARTICLE 2

CONSTRUCTION MANAGER'S SERVICES

The CITY OF KISSIMMEE does hereby retain the Construction Manager to furnish, provide and perform the Services (as defined in Section 1.3.2), as those Services may be further specifically designated and authorized by the CITY in writing. Such authorization will be issued in the form of either 1) a Construction Manager Services Authorization (CSA) or a Construction Manager Purchase Order (CPO). All provisions of this Agreement apply to any CSA or CPO with full force and effect as if appearing in full within each such document. Each CSA and CPO will be accompanied by a completed Pre-Construction Addendum, and shall set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, if applicable, and completion date, and shall become effective upon the due execution.

The Services shall include, without limitation, those described or specified in this Article 2. Such services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Additionally, depending on the particular Project, some of the services described in this Article 2 may be specifically excluded by the City, as set forth in a completed Pre-Construction Addendum.

2.1 Project Management Information System (PMIS):

2.1.1 General:

- 2.1.1.1 Commencing immediately upon issuance by the City of a Pre-Construction Addendum and accompanying CSA or CPO, the Construction Manager shall implement and shall utilize throughout the life of the particular Project all subsystems of the Project Management Information System hereinafter referred to as PMIS.

- 2.1.1.2 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the City's Representative and the Architect/Engineer monthly.
- 2.1.1.3 If requested by the City's Representative, the Construction Manager shall conduct a comprehensive workshop for participants designated by the City's Representative and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the City's Representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect/Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the City's Representative and the Architect/Engineer, procedures for accomplishing the management control aspect of the Project.
- 2.1.1.4 The PMIS shall be described in terms of the following major subsystems:
 - 2.1.1.4.1 Narrative Reporting, on a monthly basis, and
 - 2.1.1.4.2 Schedule Control, on a monthly basis, and
 - 2.1.1.4.3 Cost Control, and estimating, and
 - 2.1.1.4.4 Project Accounting, and
 - 2.1.1.4.5 Accounting and Payment, on a monthly basis, and
 - 2.1.1.4.6 Action Reports.

2.1.2 Narrative Reporting Subsystem:

- 2.1.2.1 The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the City's Representative.
- 2.1.2.2 The Narrative Reporting Subsystem shall include the following reports:
 - 2.1.2.2.1 A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including all violations and deficiencies found by the applicable permitting authorities.
 - 2.1.2.2.2 A Monthly Cost Narrative describing the current cost status of the Project.
 - 2.1.2.2.3 A Monthly Scheduling Narrative summarizing the current status of the Master Project Schedule. This report shall include an analysis of the various Project schedules, a description of the critical path, tracking of approved original baseline schedule versus the actual progress of the Work and other analyses as necessary.
 - 2.1.2.2.4 A Monthly Accounting Narrative describing the current cost and payment status of the Project. This report shall relate current encumbrances and expenditures to the budget allocations.
 - 2.1.2.2.5 A Monthly Progress Report, during the Construction Phase, summarizing the work of the various subcontractors and consultants. This report shall include information from the weekly job site meetings, as applicable, such as General Conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations, and plans for the succeeding month.
 - 2.1.2.2.6 A Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.1.2.3 The reports outlined in subsection 2.1.2.2 shall be bound and submitted monthly during the Construction Phase and shall be current through the end of the preceding month. Copies shall be transmitted to the City's Representative and the Architect/Engineer and others as designated by the City's Representative with the monthly pay requisition. Additional copies of the Monthly Executive Summary, as outlined in subsection 2.1.2.2.1, shall be bound separately and distributed monthly, as directed by the City's Representative. The Daily Construction Diary, as outlined in subsection 2.1.2.2.6, shall be maintained at the Project Site Office Facility and be made available to the City's Representative and Architect/Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the City's Representative at the conclusion of the Project.

2.1.3 Scheduled Control Subsystem:

2.1.3.1 Master Project Schedule: Within 30 days following issuance of a CSA or a CPO, the Construction Manager shall submit, to the City's Representative for approval, a Master Project Schedule covering the Pre-Construction Phase and Construction Phase. The Master Project Schedule shall serve as the framework for the subsequent development of all detailed schedules. The Master Project Schedule shall be produced and updated monthly throughout the Project. No revisions, activity additions, activity deletions, or logic changes to the Master Project Schedule or any other schedule previously approved by the City, shall be made without the City's approval. Minor or immaterial deviations that do not affect key milestone dates may be amended if approved by the City's Representative.

2.1.3.2 Construction Schedule: With the submission of the GMP Proposal, the Construction Manager shall submit to the City's Representative, for approval, a Critical Path Construction Schedule (hereinafter "Construction Schedule") in sufficient detail to graphically depict the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Work, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Construction Schedule shall be based on a "Network Analysis System" and shall be the latest version of Microsoft Schedule, Primavera P3, or equivalent, as determined by the City's Representative. The City's Representative shall determine whether the Construction Schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a Construction Schedule as aforesaid shall be sufficient grounds for the City to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the Agreement or to withhold any payment.

2.1.3.3 Updated Construction Schedule: Following development and submittal of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Work, or at such earlier intervals as circumstances may require, update the Construction Schedule. The updated Construction Schedule will show the actual progress of the Work performed compared to the original baseline schedule, approved as set forth in Section 2.1.3.2, and all updates thereto as reflected in the updated Construction Schedule last submitted prior to submittal of each such monthly update. Each such update to the Construction Schedule shall be submitted to the City's Representative. Failure of the Construction Manager to update and submit the Construction Schedule as aforesaid shall be sufficient grounds for the City to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager, until a schedule or schedule update acceptable to the City's Representative is submitted.

2.1.3.4 When required by the City's Representative, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

2.1.3.4.1 Subcontractor Construction Schedules (Sub-networks) - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a

schedule which is more detailed than the Construction Schedule, taking into account the work schedule of the other subcontractors. The Construction Manager shall ensure each Subcontractor's Construction Schedule is incorporated into the Construction Manager's Construction Schedule, ensuring the necessary information is included to allow for construction planning and monitoring the performance of each subcontractor.

2.1.3.4.2 Final Completion Schedule -The Construction Manager shall jointly develop with the Architect/Engineer and The City's Representative, a detailed plan, inclusive of Punch Lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Final Completion. The Final Completion Schedule shall be produced and updated monthly and may be part of the Construction Schedule.

2.1.3.4.3 Utility Relocation Schedule – The Construction Manager shall jointly develop with the Architect/Engineer and The City's Representative a detailed plan, for any and all utility relocations required for successful completion of the Work. The Utility Relocation Schedule shall be produced and updated monthly, and may be part of the Construction Schedule.

2.1.3.4.4 Recovery Schedule - If any portion of the Master Project Schedule or any current updates fail to reflect the actual plan or method of operation of the Work, or a contractual milestone date is more than 15 days behind, the City's Representative may require that a Recovery Schedule for completion of the remaining work be submitted. The Recovery Schedule must be submitted within 7 calendar days of the request by the City's Representative. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining work by the required Agreement milestone date. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Agreement milestone dates.

2.1.3.4.5 Change Orders - When a Change Order is proposed, the City's Representative may require the Construction Manager to identify all logic changes as a result of the Change Order. The Construction Manager shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the Master Project Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, the Construction Manager will revise the Master Project Schedule. The logic changes required by the Change Order will be considered incidental to the Construction Manager's work. No separate payment will be made for the work required to identify all logic changes that result from the Change Order.

2.1.4 Budget Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and site elements, so that the Work will be completed at a cost which, together with all other Costs of the Work, will not exceed the City's Project Budget. Requirements of this subsystem may include the following submissions:

- 2.1.4.1 Estimate at the completion of schematic design; and
- 2.1.4.2 Estimate at the completion of 60% design development plans; and
- 2.1.4.3 Estimate at the completion of 100% design development plans; and
- 2.1.4.4 Estimate at the submission of the GMP Proposal.

2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to enable the City's Representative to monitor and control the funds available for the Project, cash flow, costs, Change Orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable, and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report may be further defined by the City's Representative.

2.1.5.1 A Payment Status Report - showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

2.1.5.2 Project Accounting Structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the Change Order history including Change Order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending Change Orders.

2.1.5.3 A Cash Flow Diagram - showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments and may be requested at earlier or more frequent intervals by the City's Representative.

2.1.5.4 A Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for General Conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

2.2 Project Manual: Upon the execution of this Agreement, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of Construction Manager, the City's Representative and Architect/Engineer; work flow diagrams; and strategy for bidding the Work. The Project Manual shall be completed and submitted to the Architect/Engineer and the City's Representative for their review of the format and content, and to the City's Representative for approval as a condition precedent to the first progress payment by City to Construction Manager for services provided in the Pre-Construction Phase. The Project Manual shall be updated as necessary, with the approval of City's Representative throughout the Pre-Construction and Construction Phases. A copy of the Project Manual, and any updates, shall be submitted separately to the City's Representative and Architect/Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the City's Representative and the Architect/Engineer. The Project Manual is merely an amplification and clarification of this Agreement. Any conflicts between the Project Manual and this Agreement shall be governed by the latter. The Project Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Project Manual shall include as a minimum the following sections:

2.2.1 Project Definition - The known characteristics of the Project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project or sub-projects.

2.2.2 Project Goals - The schedule, budget, physical, technical and other objectives for the Project.

2.2.3 Project Strategy - A narrative description of the Project delivery methods shall be utilized to accomplish the Project goals.

2.2.4 Project Work Plan - A matrix display of the program of Work to be performed by the Construction Manager, the Architect/Engineer and the City's Representative during each phase of the Project.

2.2.5 Project Organization - A summary organization chart showing the interrelationships between the City, the Construction Manager, the Architect/Engineer, and other supporting firms, organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect/Engineer, and the City's Representative, showing organizational elements participating in the Project shall be included.

2.2.6 Responsibility Performance Chart - A detailed matrix showing the specific responsibilities of the City, the Architect/Engineer, and Construction Manager. The Responsibility Performance Chart shall

indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Manager shall develop a similar chart for the personnel within his/her own organization who are assigned to the Project, and also for the personnel of the City and the Architect/Engineer from data supplied by each.

- 2.2.7 Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings, submittals, and Change Orders.
 - 2.2.8 Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
 - 2.2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from City, Construction Manager and Architect/Engineer, as well as from all subcontractors, sub-consultants and suppliers of any of them. This list shall be continuously updated by the Construction Manager throughout the Project duration, with Construction Manager distributing a copy of all updates to City's Representative and Architect/Engineer.
- 2.3 Pre-Construction Phase Services: The services to be provided under this Section 2.3 constitute the Pre-Construction Phase services. The parties acknowledge the Construction Phase may commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.
- 2.3.1 Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Project and the City's Project Budget requirements, each in terms of the other.
 - 2.3.2 Consultation - The Construction Manager will jointly schedule and attend regular meetings with the City's Representative and Architect/Engineer. The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost – reducing alternatives, including assistance to the Architect/Engineer and City's Representative, in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of construction and early completion of the Project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required, in addition to items such as the identification, if necessary, of right-of-way to be acquired, outstanding permits and related issues and the status of utility relocations.
 - 2.3.3 Right of Way Acquisition – When requested, Construction Manager shall assist the City's Representative, in conjunction with the City Attorney's Office, with right of way acquisition, including but not limited to, obtaining appraisals, and assisting with the negotiation of purchase agreements. Construction Manager shall coordinate and develop in the Construction Documents all applicable conditions negotiated through the right-of-way acquisition process, including but not limited to such items as driveway transitions and modifications, fence relocations and other related items.
 - 2.3.4 Phased Construction - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect/Engineer and may make recommendations to the City's Representative with respect to dividing the Work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule, while the design is being completed. He/she shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, maintenance of traffic and utility relocation issues, status of right of way acquisition and community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the City's Representative.

- 2.3.5 Review Reports - Within 30 days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Article 2, Section 2.3. Promptly after completion of the review, he/she shall submit to the Construction Team, with copies to the Architect/Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he/she may deem appropriate, and all actions taken by the Architect/Engineer with respect to same, any comments he/she may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2, Section 2.3. Construction Manager shall not assume in any way the responsibilities of the Architect/Engineer, in particular, the responsibility of assuring that the Construction Documents are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules, and Regulations. However, if the Construction Manager recognizes that portions of the Construction Documents are at variance therewith, the Construction Manager shall include notice of same in the written report. THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.
- 2.3.6 Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the City's Representative and the Architect/Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise City's Representative and Architect/Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the City's Representative a schedule for procurement of the long-lead time items, which will constitute part of the Work as required to meet the Master Project Schedule. If such long-lead time items are procured by the City, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the City's acceptance of the Construction Manager's GMP proposal, all contracts for such items may be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.
- 2.3.7 Project Site Office Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Team to perform their respective duties in the management, inspection, and supervision of construction. Tangible personal property, otherwise referred to as Project Site Office Facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such Project Site Office Facilities, which are planned to become the property of the City at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing, and then analyzing which is the most cost effective over the useful life of the item. The Construction Manager shall present his evaluation with recommendation to the City's Representative for approval. When the Construction Manager wishes to supply Project Site Office Facilities from his/her own equipment pool, he/she shall first evaluate buy versus lease as discussed previously herein. If leasing is found to be the least expensive approach, then he/she may lease such Project Site Office Facilities from his/her own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained. For all such facilities purchased, which are to become the property of the City at the conclusion of the Project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. At the conclusion of the Project, the Construction Manager shall provide the City's Representative with a complete inventory of equipment that has been purchased for the City. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said

equipment has a title, said title shall be properly transferred to the City or to his designee. The Construction Manager is responsible for proper care and maintenance of all equipment while in his/her control. At the time of transfer to the City, the City may refuse acceptance of the equipment if the City determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse City for the cost of such item.

- 2.3.8 Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of work areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced. He/she shall submit to the Construction Team his/her recommendations as to needed requirements of this nature and as to the contract, or contracts, in which they should be included. The Construction Manager is totally responsible for all weather protection necessary to insure that all new construction is adequately protected from the normal inclement elements.
- 2.3.9 Market Analysis and Stimulation of Bidder Interest - The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project. The Construction Manager shall submit to the City's Representative a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the City's Representative and the Architect/Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the City market place and identify and encourage bidding competition. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.
- 2.4 Construction Phase - After the Construction Documents have been sufficiently completed by Architect/Engineer and approved by City's Representative for all the Work (or such portions thereof as may be designated by City in writing) and City and Construction Manager have agreed in writing upon the GMP to be paid to Construction Manager and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Manager shall fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all the terms and conditions of the Contract Documents.
 - 2.4.1 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent, full time, staff at the Project Site, authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors, and he shall provide no less than those personnel during the respective phases of construction that are set forth in Schedule 1 of the GMP Addendum. He/she shall not change any of those persons named in said Schedule unless mutually agreed to by the City's Representative and Construction Manager. In such case, the City's Representative shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
 - 2.4.2 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for his/her personnel, and shall provide this definition to the City's Representative and all other affected parties, such as the code inspectors of the permitting agencies, the subcontractors and the Architect/Engineer, to provide general direction of the Work and progress of the various phases and subcontractors. The City's Representative and Architect/Engineer may attend meetings between the Construction Manager and his/her subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts.
 - 2.4.3 Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the City, its representatives and the Architect/Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2, expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He/she shall also continue to provide current scheduling information,

direction and coordination regarding milestones, and beginning and finishing dates. He/she is also responsible for performance and the relationships of his/her work to the work of his/her subcontractors and suppliers, to enable them to perform their respective tasks, so that the development of construction progresses in a smooth and efficient manner in conformance with the Master Project Schedule.

- 2.4.4 Solicitation of Bids Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposals when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and, if directed by the City, for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

2.4.4.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the Work. The Construction Manager shall strive to receive at least three competitive bids per trade package. Should the nature of the trade package prohibit three competitive bids, the Construction Manager shall notify the City's Representative in writing as to the reason and offer suggestions, if any, to create trade interest.

2.4.4.2 The Construction Manager shall be responsible for coordinating with the Architect/Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.

2.4.4.3 The Construction Manager and the City's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect/Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the City's Representative and the Architect/Engineer and, upon receiving clarification or correction in writing, shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

- 2.4.5 Subcontracts Subject to Article 6 and, in accordance with Article 2, Section 2.4.4, the Construction Manager shall award subcontracts to the qualified low bidder after the Construction Manager and the City have reviewed each proposal and are satisfied that the subcontractor/supplier is qualified to perform the work. Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, complete copies of the Contract Documents to which the subcontractor will be bound by this Section 2.4.5 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

2.4.5.1 All subcontracts shall: (1) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to City by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to City at the election of City, upon termination of Construction Manager, (3) provide that City will be an additional indemnified party of the subcontract, (4) provide that City will be an additional insured on all insurance policies required to be provided by the subcontractor, except workman's compensation, (5) assign all warranties directly to City, and (6) identify City as an intended third-party beneficiary of the subcontract.

2.4.5.2 Unless otherwise expressly agreed to by City in writing, all subcontracts shall provide: **LIMITATION OF REMEDIES – NO DAMAGES FOR DELAY** The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the City or Architect/Engineer or

attributable to the City or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim. Each subcontract shall require that any claims by the subcontractor for delay must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the City, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

- 2.4.5.3 Subcontractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the City, under the agreement, by the parties to the extent of the work to be performed by the subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the City and Architect/Engineer under the Contract Documents, with respect to the Work to be performed by the subcontractor, so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with its sub-subcontractor.
- 2.4.5.4 Insurance requirements for subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the City. The Construction Manager shall be responsible to the City for the acts and omissions of his/her employees, agents, subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 2.4.5.5 If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP Addendum, the Construction Manager reserves the right to perform that portion of the Work, or negotiate for its performance for the specified line item lump sum amount or less.
- 2.4.6 A Public Construction Bond in the total amount of the GMP, along with all insurance certificates will be provided by the Construction Manager after approval of the GMP by the Commission, in the form attached hereto and incorporated herein as Exhibit "M". No work shall be performed until these documents are provided and the certificates are current.
 - 2.4.6.1 The Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.
 - 2.4.6.2 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, as amended by the audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department and A.M. Best rated A VIII or better.
 - 2.4.6.3 If the surety on any Bond furnished by the Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in any state or it ceases to meet the requirements of Section 2.4.6.2, the Construction Manager shall within ten (10) days thereafter substitute another Bond and surety, both of which must be acceptable to the City.
 - 2.4.6.4 All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Construction Manager shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Florida to issue bonds or insurance policies for the limits and coverage so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act.
- 2.4.7 Quality Control - The Construction Manager shall develop and maintain a written program, acceptable to the City's Representative and Architect/Engineer, to assure quality control of the construction. He/she shall supervise the work of all subcontractors, providing instructions to each when their work

does not conform to the requirements of the Construction Documents, and he/she shall continue to exert his/her influence and control over each subcontractor to ensure that corrections are made in a timely manner, so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of Work and conformance with the requirements of the Construction Documents, the City's Representative shall be the final judge of performance and acceptability, subject to the dispute provisions of this Agreement.

2.4.8 Submittals and Substitutions- Construction Manager shall carefully examine the Contract Documents for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. The Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to the Architect/Engineer for review and action. Within 14 days, the Architect/Engineer will transmit them back to the Construction Manager, who will then issue the submittals to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of it by the subcontractors. The Construction Manager shall advise the Architect/Engineer in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable the Architect/Engineer to prioritize requests coming from the Construction Manager. The Construction Manager shall advise the City's Representative and Architect/Engineer in writing when timely response is not occurring on any of the above.

2.4.8.1 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Architect/Engineer for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and at least of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement services shall be indicated. The application also shall contain an itemized estimate of all costs or savings that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Architect/Engineer in evaluating the proposed substitute. Architect/Engineer may require Construction Manager to furnish, at Construction Manager's expense, additional data about the proposed substitute.

2.4.8.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Architect/Engineer, if Construction Manager submits sufficient information to allow Architect/Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Architect/Engineer shall be the same as those provided herein for substitute materials and equipment.

2.4.8.3 Architect/Engineer shall be allowed a reasonable time within which to evaluate each proposed substitute. Architect/Engineer and City's Representative shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without City's and Architect/Engineer's prior written acceptance which shall be evidenced by

either a Change Order or an approved submittal. City may require Construction Manager to furnish, at Construction Manager's expense, a special performance guarantee or other surety with respect to any substitute. The cost of such guarantee may be reimbursable from the City's Owner Allowance or Buyout Allowance funds, provided that this cost is presented with the proposed substitute. If City rejects the proposed substitute, at City's direction, City may require Construction Manager to reimburse City for the charges of Engineer and Engineer's consultants for evaluating the proposed substitute.

- 2.4.9 Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the City and the City's Representative, including the Architect/Engineer.
- 2.4.10 Permits - The Construction Manager shall secure and pay for all permits and/or licenses which are customarily secured by a General Contractor. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. Cost for all re-inspections of Work found defective and subsequently repaired, shall be borne by the Construction Manager, unless such cost is not a result of negligence on the part of the Construction Manager.
- 2.4.11 Project Administration - The Construction Manager shall provide Project Administrative functions during construction to assure proper documentation, including, but not limited to, such things as the following:
 - 2.4.11.1 Job Meetings – Hold weekly progress and coordination meetings, or more or less frequently, if required, to provide for the timely completion of the Work. In addition, a regular monthly Project status meeting will be held between the Architect/Engineer, City's Representative and Construction Manager. The meetings shall serve as a tool for planning of work and enforcing schedules and for establishing procedures and responsibilities.
 - 2.4.11.2 Shop Drawing Submittals/Approvals – Check shop drawings and implement procedures to be approved by City's Representative for submittal and transmittal to the Architect/Engineer and City's Representative of such drawings for action, and closely monitor their submittal and approval process.
 - 2.4.11.3 Material and Equipment Expediting – Closely monitor material and equipment deliveries, follow-up procedures on supplier commitments of all subcontractors, and maintain a material and equipment expediting log.
 - 2.4.11.4 Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
 - 2.4.11.5 Document Interpretation (RFI) - Refer all questions for interpretation of the Construction Documents to the Architect/Engineer with a copy to the City's Representative.
 - 2.4.11.6 Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the City's Representative and the Architect/Engineer including information on the subcontractors' work, and the percentage of completion. Keep a daily log available to the City, the Engineer and the permitting authority's inspectors.
 - 2.4.11.7 Subcontractors' Progress - Prepare periodic punch lists for the subcontractors' work, including unsatisfactory or incomplete items and schedules for their completion.
 - 2.4.11.8 Start-Up - With the City's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.

- 2.4.11.9 Safety – Provide a safety program for the Project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform Work in accordance with the best acceptable practice.
- 2.4.11.10 Record Drawings - The Construction Manager shall monitor the progress of his/her own forces and his/her Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect/Engineer, who will prepare the final record drawings. The Construction Manager shall continuously review “As-Built” Drawings and marked up progress prints to provide as much accuracy as possible.
- 2.4.11.11 Systems Maintenance and Instruction - The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey those to the City in such a manner as to promote their usability. The Construction Manager shall provide City’s operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training shall be videotaped by Construction Manager for subsequent presentation to City’s operations and maintenance personnel.
- 2.4.11.12 Administrative Records - Construction Manager shall maintain in a safe place at the Project Site Office Facility, one record copy and one permit set of the Contract Documents, including, but not limited to, all Construction Documents, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Architect/Engineer, in good order and annotated to show all changes made during construction. The record Contract Documents shall be updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that have been made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated record Contract Documents. As a condition precedent to City’s obligation to make a monthly progress payment, Construction Manager shall provide evidence, satisfactory to City’s Representative and Architect/Engineer, that Construction Manager is fulfilling its obligation to update the record Contract Documents. All buried and concealed items, within the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than 2 permanent features. The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings, shall be available to City’s Representative and Architect/Engineer for reference. In addition, the Construction Manager shall be required to maintain at the Project Site Office Facility on a current basis, electronic and/or copies of files and records such as, but not limited to the following:

- Contracts [subcontracts]
- Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost Estimates
- Bulletin Quotations

Lab Test Reports
 Insurance Certificates and Bonds
 Contract Changes
 Construction Change Directives
 Permits
 Purchase Orders
 Material Purchase Delivery Logs
 Technical Standards
 Design Handbooks
 "As-Built" Marked Prints
 Operating & Maintenance Instruction
 Daily Progress Reports
 Monthly Progress Reports
 Correspondence Files
 Transmittal Records
 Inspection Reports
 Bid/Award Information
 Bid Analysis and Negotiations
 Punch Lists
 PMIS Schedule and Updates
 Suspense (Tickler) Files of Outstanding Requirements
 Project Manual
 Job Photographs

2.5 Final Completion:

2.5.1 Substantial Completion: When the entire Work (or any portion thereof designated in writing by City) is ready for its intended use, Construction Manager shall notify City's Representative and Architect/Engineer in writing that the entire Work (or such designated portion) is substantially complete and request that Architect/Engineer prepare a Certificate of Substantial Completion (or a Certificate of Partial Substantial Completion), a copy of which is attached as **Exhibit "D"**. Said written notice from Construction Manager shall include a proposed punch list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, City's Representative, Construction Manager and Architect/Engineer shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If City's Representative and Architect/Engineer do not consider the Work (or designated portion) substantially complete, Architect/Engineer shall notify Construction Manager in writing giving the reasons therefore. If City and Architect/Engineer consider the Work (or designated portion) substantially complete, Architect/Engineer shall deliver to Construction Manager the Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a final punch list of items to be completed or corrected by Construction Manager before final payment. Failure to include an item on the final Punch List does not waive City's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment.

2.5.2 Final Acceptance: When Construction Manager believes it has fully performed all of the Services, including all punch list items, Construction Manager shall deliver to City's Representative all items listed on **Exhibit "G"**, which includes, but is not limited to, a written Release and Affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be in conformance with **Exhibit "E"** and shall be delivered to City's Representative by Construction Manager at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Architect/Engineer and City's Representative shall promptly inspect the Work to determine if all of the Work has been completed and is ready for Final Acceptance by City. If City's Representative and Architect/Engineer determine Construction Manager has completed the entire Work and performed all of the Services, City's

Representative shall promptly approve the Final Completion Certificate of the Project, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Services have been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Manager, as noted in the final Certificate for Completion, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment has been satisfied. Neither the final payment nor any retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached to the Agreement as **Exhibit "E"**, (2) consent of surety to final payment, and (3) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by City. City reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Architect/Engineer may have issued its recommendations. Until the Construction Manager completes all of its contractual obligations, with the exception of the Warranty period, neither the final payment nor any retainage shall become due and payable.

The City may occupy or take control of portions of the project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2, Sections 2.4.11.8, 2.4.11.10, 2.5.1 and 2.6 have been completed to the City's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Substantial Completion.

2.6 Warranty and Corrective Period

- 2.6.1 The Construction Manager shall warrant that all materials and equipment included in the Work will be new, except where indicated otherwise in Contract Documents, and that the Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Construction Documents.
- 2.6.2 The Construction Manager shall collect and deliver to the City's Representative any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the City's Representative and the Architect/Engineer, a warranty inspection eleven (11) months after the date of Substantial Completion of the Project. Construction Manager shall obtain and assign to City all express warranties given to Construction Manager by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager further warrants to City that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to City and shall not include any exclusions, exceptions or modifications except to the extent approved by City in its sole discretion.
- 2.6.3 In addition to the express warranties provided for in Sections 2.6.1 and 2.6.2, and all other rights and remedies available to City at law or in equity, including any implied warranties City may be entitled to as a matter of law, Construction Manager shall promptly correct, upon receipt of written notice from City's Representative, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by City in its sole discretion to present an immediate threat to safety or security, City shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse City for all costs and expenses incurred by City in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved.
- 2.6.4 With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Contingency Funds may be utilized to correct such damage

provided that damage was not caused by negligence on the part of the Construction Manager. Construction Manager's warranty excludes remedy for damage or defect caused by City's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by City (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by City (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

ARTICLE 3

CITY'S RESPONSIBILITIES

3.1 City's Information:

The City shall provide full information regarding the requirements for the Project.

3.2 City's Representative:

The City shall designate in writing any additional representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. In no event, shall any delegation of authority be contrary to State, County or City laws or codes. Such designations as of the date hereof are set forth in Section 1.3.18. Functions that this Agreement provides, which will be performed by the City, can be delegated by written notice to the Construction Manager from the City. The designation(s) of City's Representative, as set forth in Section 1.3.18, may be amended from time to time by the City, pursuant to written notice to the Construction Manager of such amendment. The Construction Manager shall be entitled to rely on directions (and it shall be required to follow directions) from the City's Representative within the authority conferred by the Commission in this Agreement or any Amendment or Change Order to this Agreement. The City of Kissimmee Commission hereby authorizes the City's Representative to: (1) act as the Board's agent and execute documents associated with the Project. Examples of these documents are Notices of Commencement, Certificates of Substantial and Final Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the City; and (4) issue a duly authorized memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by City's Representatives shall be binding on the City. The City's Representative does not have the authority to authorize work beyond the scope of the Contract Documents.

The City additionally authorizes the City Manager, or his designee, in conjunction with the City's Representative, to authorize individual changes in the Work up to *\$50,000.00*. Said changes shall be funded from the City's Allowance and shall not cause an increase to City's Project Budget.

3.3 Design Engineer and Engineer's Agreement:

The City shall retain an Architect/Engineer for design and to prepare Construction Documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the City and the Architect/Engineer, a copy of which will be furnished to the Construction Manager.

3.4 Site Survey and Reports:

The City shall provide for the site of each Project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

3.5 Approvals and Easements:

The City shall pay for necessary approvals, properties, easements, assessments and charges required for the construction, use or acceptance of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The City shall furnish such legal services as may be necessary for providing the items set forth in Article 3, Section 3.5, and such auditing services as it may require.

3.7 Construction Documents:

The Construction Manager will be furnished a reproducible set of all copies of the Construction Documents reasonably necessary and ready for printing.

3.8 Cost of Surveys & Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the City's expense. Construction Manager shall rely upon the accuracy and completeness thereof as noted in the various reports and surveys. Additional reports or surveys deemed to be necessary by the Construction Manager shall be obtained by the Construction Manager.

3.9 Project Fault Defects:

If the City becomes aware of any fault or defect in the Project or non-conformance with the Construction Documents, the City shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.10 Funding:

The City shall furnish, in accordance with the established Master Program Schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence performance of any Services, unless authorized in writing by the City.

3.11 Permitting & Code Inspections:

The City and Construction Manager shall coordinate with the appropriate permitting authorities.

ARTICLE 4

CONTRACT TIME

- 4.1 The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Final Completion of the Work is referred to hereafter as the "Contract Time". With respect to the Construction Phase Services, the "Construction Phase Commencement Date" shall be established in the GMP Addendum. No portion of the Work, with respect to the Construction Phase Services, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by City in writing. The GMP Addendum shall also include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Manager. The "Substantial Completion" date shall be established in terms of calendar days after the Construction Phase Commencement Date. Unless noted otherwise, the Final Completion Date is 30 (thirty) days after Substantial Completion. In the event Construction Manager and City fail to reach an agreement on the Contract Time, City may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent

such services were expressly approved in advance and in writing by City; but Construction Manager shall not be entitled to any further or additional compensation from City, including, but not limited to, damages or lost profits on portions of the Work not performed.

- 4.2 Liquidated Damages. City and Construction Manager recognize that, since time is of the essence for this Agreement, City will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified in the GMP Addendum, as said time may be adjusted as provided for herein. In such event, the total amount of City's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public in the City of Kissimmee, Florida. It is hereby agreed that it is appropriate and fair that City receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the required time period, City shall be entitled to assess, as liquidated damages, but not as a penalty, a specified amount for each Project, which shall be stated in the GMP Addendum, for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represent a fair and reasonable estimate of City's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

ARTICLE 5

CONTRACT TIME EXTENSIONS

- 5.1 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, utility work being performed within the Project limits, or by unusually severe weather conditions by comparison with the ten year Osceola County, Florida average not reasonably anticipatable, Construction Manager shall notify City's Representative and Architect/Engineer, in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a Contract Time Extension. Contract Time Extension requests shall be evaluated through the Change Order process.
- 5.2 If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum, or petroleum related products, or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall: (i) stop Work in the area affected, and (ii) report the condition to City's Representative in writing. If the Work is so stopped in excess of ten (10) days and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Manager shall indemnify the City and hold City harmless for any costs incurred by the City with respect to such material.
- 5.3 **NO DAMAGES FOR DELAY.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the City and Architect/Engineer may be responsible, in whole or in part, shall relieve Construction Manager of his/her duty to perform, or give rise to any right to damages or additional compensation from the City. Construction Manager's sole remedy, if any, against the City will be the right to seek an extension to the Contract Time and the payment of additional Costs of the Work and associated increase in the Construction Manager's Fee, as allowed pursuant to Article 6. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. In no event shall the City be liable to Construction Manager, whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

ARTICLE 6

CONTRACT AMOUNT

- 6.1 In consideration of the full and faithful performance by the Construction Manager of the covenants in this Agreement, City agrees to pay, or cause to be paid, to Construction Manager the following amounts (hereinafter collectively referred to as "Contract Amount"), in accordance with the terms of this Agreement and with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "K"**. The Hourly Rate Schedule identifies all job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.
- 6.1.1 Pre-Construction Phase Services - For all Pre-Construction Phase Services enumerated in this Agreement, including, but not limited to, providing value engineering, reviewing documents for constructability, assisting and meeting with the Owner and the Design professionals, preparing cost estimates and schedules and preparing the draft GMP Proposal, Construction Manager shall receive a fixed amount agreed to, between the parties, for each Project.
- 6.1.2 Construction Phase Services – With respect to the Construction Phase Services to be provided by Construction Manager, City shall: 1) reimburse Construction Manager for the Cost of the Work; and 2) pay the Construction Manager a Construction Manager's Fee to be negotiated as part of the GMP Addendum process.
- 6.1.2.1 Construction Manager's Fee: The Construction Manager's Fee shall be Construction Manager's total compensation for the Construction Manager's profit on the Cost of the Work, as defined below. Construction Manager agrees to provide City with a GMP Proposal for the total sum of the Construction Manager's Fee, plus the Cost of the Work, plus the Construction Manager's Contingency, after the Construction Manager determines the Construction Documents are sufficiently complete.
- 6.1.2.2 The GMP Proposal shall be based upon actual subcontractor cost proposals with the various subcontractors. Further, the proposal shall be broken down into the categories and level of detail required by City's Representative. Construction Manager agrees that all its books, records and files, with respect to its development of the GMP Proposal, shall be open to City for review and copying. The final GMP Proposal shall be mutually agreed upon by City and Construction Manager and shall be set forth in the GMP Addendum (**Exhibit "C"**). The GMP Addendum shall further identify the drawings, specifications (Schedule 1 of the GMP Addendum) and other descriptive documents (Schedule 4 of the GMP Addendum) upon which the GMP is based. The Construction Manager guarantees that in no event shall the sum of the Construction Manager's Fee, the total Cost of the Work, and the Construction Manager's Contingency exceed the GMP. The Construction Manager acknowledges multiple GMP Addendums may be required for the portions of the Project to support the Project phasing and schedule.
- 6.1.2.3 The amount to be paid for Construction Manager's Fee shall be stated in the GMP Addendum. The Construction Manager's Fee shall be paid proportionally to the ratio of the Cost of the Work completed. The balance of the Construction Manager's Fee shall be paid at Final Completion. If construction is authorized for a portion of the Project, the Construction Manager's Fee shall be paid proportionally to the amount of the Work authorized by the City.
- 6.1.2.4 In the event Construction Manager and City fail to reach an agreement on the GMP, City may elect to terminate this Agreement. In the event of any such termination, Construction

Manager shall be entitled to receive that portion of the Contract Amount attributable to the completed Pre-Construction Phase Services; but Construction Manager shall not be entitled to any further additional compensation from City, including but not limited to damages or lost profits on portions of the Work not performed. Construction Manager may be required to continue to provide all other agreed upon Pre-Construction services.

- 6.1.2.5 The Construction Manager will not be due any increases in the Construction Manager's Fee on increases in the GMP value that do not exceed a cumulative total of a specified amount for each Project which shall be stated as a "nominal overage" in the GMP Addendum. Should the GMP value be increased by more than such nominal overage amount under the terms of Article 7 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Construction Manager's Fee will be (5) five percent of that portion of the accumulative increases in the GMP value that exceed the GMP value by more than such nominal overage amount.
- 6.1.3 Cost of the Work. The Phrase "Cost of the Work" shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Services. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of City only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection 6.1.3:

6.1.3.1 Construction Phase Costs: The following items constitute the elements that can be included in the Construction Phase Cost calculations.

- 6.1.3.1.1 Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with City's written agreement, at off-site workshops;
- 6.1.3.1.2 Wages of Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site as specified in Schedule 1 to the proposed GMP;
- 6.1.3.1.3 Wages of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with City's written agreement;
- 6.1.3.1.4 Wages of Construction Manager's supervisory, technical, and administrative personnel when assigned to this Project and specifically working on this Project in the Construction Manager's administrative or home office, as specified in Schedule 1 to the proposed GMP;
- 6.1.3.1.5 Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts;
- 6.1.3.1.6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
- 6.1.3.1.7 Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof;
- 6.1.3.1.8 Minor expenses at the site, such as internet, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.

6.1.3.2 Subcontract and Material Costs. All Subcontractor Costs will be documented and signed by Subcontractor invoices and all material costs will be documented by copies of invoices. Subcontract and Material Costs may also be referred to as “Reimbursable Costs”. All requests for payment of expenses eligible for reimbursement under the terms of this Agreement, unless otherwise specifically stated herein, shall be reimbursed per the City’s Reimbursable Schedule that is attached hereto as **Exhibit “J”** and made a part of this Agreement. Reimbursable Costs shall include:

- 6.1.3.2.1 Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager’s own forces in the performance of the work, at rental charges consistent with those prevailing in the area;
- 6.1.3.2.2 Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction project. General Liability will be cost at a fixed rate of __%, to be stated in the GMP Addendum of the final Contract Amount, adjusted to include any previously deducted City Direct Purchase amounts, and Construction Manager bonds will be cost at a fixed rate of __%, to be stated in the GMP Addendum. The premium stated will be substantiated with industry standard documentation. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. **There shall be no Construction Phase Fee on this item;**
- 6.1.3.2.3 Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles, provided they have resulted from causes other than the negligent misconduct of Construction Manager;
- 6.1.3.2.4 Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable;
- 6.1.3.2.5 The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship, or other causes due to the negligence of the Construction Manager or his/her subcontractors or suppliers. No costs shall be paid by the City to the Construction Manager for any expenses made necessary to correct defective workmanship, or to correct any work not in conformance with the Plans and Specifications, or to correct any deficiency or damage caused by negligent acts by the Construction Manager;
- 6.1.3.2.6 Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of Subcontractors, except in the case of a Subcontractor's default;
- 6.1.3.2.7 Costs for trash and debris control and removal from the site;
- 6.1.3.2.8 Costs incurred due to an emergency affecting the safety of persons and property;
- 6.1.3.2.9 Legal costs reasonably and properly resulting from prosecution of the Project for the City, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations: 1) The City approved, in writing, incurring such costs in advance, which approval shall be in the City’s sole discretion; and 2) the legal costs were not incurred as result of the Construction Manager’s own negligence or default. This paragraph does not provide for payment of legal costs

incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders, or in enforcing the obligations of this Agreement;

- 6.1.3.2.10 Transportation outside of the City of Kissimmee for those personnel employed directly for the project, not including relocation expenses. Such transportation must be extraordinary and be approved in advance by the City's Representative, and will be in accordance with the Construction Manager's standard personnel policy;
- 6.1.3.2.11 Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the project;
- 6.1.3.2.12 Costs for watchman and security services for the project, if necessary;
- 6.1.3.2.13 Costs for efficient logistical control of the Project, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space;
- 6.1.3.2.14 Costs for such temporary facilities and temporary protection during construction, as approved by the City, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software;
- 6.1.3.2.15 Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work;
- 6.1.3.2.16 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities (including Project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;
- 6.1.3.2.17 Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others, shall be subject to the prior written approval of City's Representative;
- 6.1.3.2.18 Costs, fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
- 6.1.3.2.19 Cost of Public Information Programs or other neighborhood functions hosted by Construction Manager at the direction of City's Representative;
- 6.1.3.2.20 Costs of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Agreement;
- 6.1.3.2.21 Cost of documentation, inspection and testing as required for the preparation of the F.O.T Final Estimate and implementation of the FDOT Contractor Quality Control process;

6.1.3.3 Costs Not To Be Reimbursed. The Cost of the Work shall not include the following items: Except as provided in Article 6, Section 6.1.3.1:

6.1.3.3.1 Temporary living and travel expenses of employees who are not relocated, but are assigned to the Project;

6.1.3.3.2 Except as provided in the Fringe Benefits rate included in Article 6, Section 6.1.3.1.4, expenses of Construction Manager's principal office and offices other than the Project site office;

6.1.3.3.3 Overhead and general expenses, except as may be expressly included in Article 6, Section 6.1.3.1 and 6.1.3.2;

6.1.3.3.4 Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work;

6.1.3.3.5 Rental costs of machinery and equipment, except as specifically provided in Article 6, Section 6.1.3.2.1;

6.1.3.3.6 Except as expressly provided in Article 6, Section 6.1.3.2.5, costs due to the negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied;

6.1.3.3.7 Any costs not specifically and expressly described in Article 6, Section 6.1.3.1 and 6.1.3.2 above;

6.1.3.3.8 Construction Manager is responsible, without reimbursement from City, for re-inspection fees and costs; to the extent such re-inspections are due to the negligence of the Construction Manager;

6.1.3.4 Adjustments in Construction Phase Costs: For changes in the Project as provided in Article 7, the Construction Phase Costs shall be adjusted as follows:

6.1.3.4.1 The Construction Manager shall be paid an additional amount, subject to negotiation, if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss, excluding any condition that may have been caused from negligent acts by the Construction Manager.

6.1.3.4.2 Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs or Construction Manager's Fee paid to the Construction Manager, unless such delays are as defined in Article 7.

6.1.4 City's Allowance: The GMP Addendum shall include the City's Owner Allowance, which permits the City to authorize the Construction Manager to perform work which may not have been specifically addressed in the original contract documents, but which the City deems necessary for the project. The City's Allowance is also intended to protect against price increases between the GMP Addendum and the completion of the 100% Construction Documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction, and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the City's Allowance prior to the release of funds by the City. Documentation for use of the City's Allowance shall be determined by the Construction Team, included in the Project Manual and displayed monthly in

the PMIS. The Architect/Engineer shall verify the actual costs. The maximum dollar amount of permitted Allowance Work shall be 5% of the GMP or \$250,000, whichever is less. The City Manager or his designee can approve the use of the City's Allowance up to \$50,000 per occurrence. When allowance funds are utilized for changes and/or additions to the work, the CM shall submit a written request to the City's Representative, in the same manner as a change order request. The City's Representative shall prepare an Allowance Authorization Release, in form attached here to as **Exhibit "I"** to this Agreement.

The GMP Addendum may, at the City's discretion, also contain allowance time, not to exceed ten (10) percent of the total amount of time allotted for the work. This time shall be used for any unforeseen changes to the work which may cause the time to be extended and will be granted via an Allowance Authorization Release, approved by the City Manager or his designee.

6.1.4.1 Following the full execution of the GMP Addendum, at a point mutually agreed upon between the City's Representative and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds may be taken from the City's Allowance. If the net amount of the buyout results in a savings, the savings will be assigned to the City's Buyout Allowance.

6.1.5 The City's Buyout Allowance shall be created by savings generated by the subcontractor buyout, unused contingency funds, and also by reductions in scope that otherwise could reduce the GMP. The intent of this City's Buyout Allowance is to allow funds already approved within the GMP Addendum to remain and be used at the City's discretion for scope issues that may become required and/or desired during the course of the project. Authorizations up to \$25,000, for the use of the City's Buyout Allowance, will be granted by the City Manager, or his designee. Authorizations for more than \$25,000 will be required to be obtained from the Board.

ARTICLE 7

CHANGE IN THE PROJECT

7.1 Change Orders:

- 7.1.1 City shall have the right, at any time during the progress of the Work, to increase or decrease the Work. Promptly after being notified of a change, but in no event more than 14 days after its receipt of such notification (unless City's Representative has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the Architect/Engineer, no addition or changes to the Work shall be made except upon written order of City, and City shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order.
- 7.1.2 A Change Order, in form attached here to as **Exhibit "H"** to this Agreement, shall be prepared by City's Representative, reviewed by Architect/Engineer and Construction Manager, and executed promptly by the parties after an agreement is reached between Construction Manager and City, concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as City and Construction Manager shall mutually agree.
- 7.1.3 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of any unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably would not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall

provide City's Representative with prompt written notice thereof before conditions are disturbed and in no event later than 48 hours after first observance of such conditions. City's Representative and Architect/Engineer shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, City will acknowledge and agree to an equitable adjustment to the Contract Amount or Contract Time, or both, for such Work. If City's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Document or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Contract is justified, City shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by City must be made within 48 hours after Construction Manager's receipt of the written determination of City's Representative. If City's Representative and Construction Manager cannot agree on an adjustment to the Contract Amount or Contract Time, the parties shall comply with the dispute resolution procedure set forth in the Contract Documents.

- 7.1.4 The increase or decrease in the GMP as set forth in the GMP Addendum resulting from a change in the Project shall be determined in one or more of the following ways: 1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and City's Representative, or 2) by unit prices stated in the Agreement or subsequently agreed upon.
- 7.1.5 If none of the methods set forth in Article 7, Section 7.1.4 is agreed upon, the Construction Manager, provided he/she receives a written order signed by the City, shall promptly proceed with the Work involved. The increase or decrease in the GMP shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate, without prior written approval by the City's Representative. In such case, and also under Article 7, Section 7.1.4 above, the Construction Manager shall keep and present, in such form as the City's Representative may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work as outlined in Article 6., Section 6.1.3.2 .
- 7.1.6 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the City or the Construction Manager, the applicable unit prices and GMP shall be equitably adjusted.
- 7.1.7 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop Work in the area affected and report the condition to the City in writing. City shall thereafter, as soon as reasonably possible, conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste, or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the City to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.

- 7.1.8 The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to the changes clause herein.
- 7.1.9 *Intentionally omitted.*
- 7.1.10 Claims for Additional Cost or Time: All claims for additional cost or time, in excess of what is addressed in Article 6.1.4, shall be made by request for a Change Order submitted as provided in this Article. The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the City or the Architect/Engineer or of any employee of either or by any separate Construction Manager employed by the City or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the City pending resolution of disputes, and such delay extends the completion date, then the dates for completion may be equitably adjusted. Only delays, which are determined to extend the critical path of the schedule for constructing the project, will result in a time extension.
- 7.1.11 Minor Changes in the Project: The City will have authority to order minor changes in the Project not involving an adjustment in the Contract Amount or Contract Time and not inconsistent with the intent of the Construction Documents. Such changes shall be effected in writing. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the City and Architect/Engineer.
- 7.1.12 Emergencies: In any emergency affecting the safety of persons or property, the Construction Manager shall act at his/her discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided herein. Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project Site. If conditions are such that it is safe to return to the Project site, Construction Manager shall give Architect/Engineer written notice within 48 hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Architect/Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the 48-hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek and adjustment to the Contract Amount or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to City all accidents relating to the Work that result in any personal injury or property damage.

ARTICLE 8

PAYMENTS TO THE CONSTRUCTION MANAGER

8.1 Progress Payments

- 8.1.1 Construction Manager's monthly Applications for Payment shall be in a form, as shown in Exhibit "F", and shall contain such detail and backup as City reasonably may require. Such detail and backup shall include documentation of actual payments made.
- 8.1.2 At the time it submits its GMP Proposal to City, Construction Manager shall submit to City's Representative and Architect/Engineer, for their review, a Schedule of Values based upon the GMP Proposal. The Schedule of Values will be based on the major items of work. The Schedule of Values will be structured so that the costs of the major items of work can be allocated to the various elements of work. The Schedule of Values shall be updated for the current month Change Orders and submitted each month to Architect/Engineer along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit "F".
- 8.1.3 If the payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at an approved location off site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that City has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City's interest therein, all of which shall be subject to City's satisfaction.
- 8.1.4 Construction Manager shall submit a notarized original of its monthly Application for Payment to City's Representative, or Architect/Engineer, as directed by the City's Representative, on a monthly basis, on or before the 25th of each month. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Within seven calendar days after receipt of each Application for Payment, Architect/Engineer shall submit to City's Representative, a certification of the Application for Payment in the amount recommended by Architect/Engineer as being due and owing Construction Manager. Upon approval by City's Representative, payment shall be made to Construction Manager in accordance with the Florida Prompt Payment Act Statute 218.735. As a condition to the application for the monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within 30 days after receipt of information that a change to the Construction Documents has occurred.
- 8.1.5 Ten percent (10%) retainage shall be held on all payments until the Construction Phase is 50% complete, except when approved by the City, certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. After 50% completion, the amount of retainage shall be reduced from 10% to 5%, in accordance with Section 255.078, Florida Statutes. Retainage shall not be withheld on services or fees set forth in Article 6, Section 6.1.2 and 6.1.3.
- 8.1.6 Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.
- 8.1.7 Each Application for Payment shall be accompanied by a Release and Affidavit showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. City shall not be required to make payment until and unless these affidavits are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which City has paid Construction Manager, Construction Manager agrees to refund such money to City.

8.2 Payments Withheld

Architect/Engineer shall review each Application for Payment submitted by Construction Manager and shall make recommendations to City's Representative as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Both Architect/Engineer and City's Representative shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, and City's Representative may withhold any payments otherwise due Construction Manager under this Agreement, to the extent it is reasonably necessary, to protect City from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against City attributable to the negligence of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. City shall have the right, but not the obligation, to take any corrective action City deems appropriate to cure any of the above noted items, at the Construction Manager's expense, if Construction Manager has not started with a cure, to the City's reasonable satisfaction, of any of the above noted items within five working days after Construction Manager's receipt of written notice from City.

8.3 Final Payment.

City shall make final payment to Construction Manager provided the Work is finally accepted by City in accordance with Article 2, Section 2.5.2, and provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished City with a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as Exhibit "E", as well as a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or City. Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against City arising out of this Contract or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor the payment by City shall be deemed to be a waiver of City's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by City's Representative or Architect/Engineer at the time of final inspection. The Project will be considered complete when all Work has been completed and accepted by the City Commission. The Construction Manager will then be released from further obligation except as set forth in Section 2.6 Warranty.

ARTICLE 9

INSURANCE, WAIVER OF SUBROGATION, AND INDEMNITY

9.1 Construction Manager's Insurance:

9.1.1 The Construction Manager shall not commence any construction work in connection with this Agreement until he/she has obtained all of the following types of insurance and such insurance has been approved by the City, nor shall the Construction Manager allow any subcontractor to commence work on his/her subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida with an A.M. Best & Company rating of no less than A. The insurance company must have a current A.M. Best & Company financial rating of Class VIII or higher. The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida. The insurance company must have been in such insurance business continuously for not less than 5 years prior to the date of the execution of this Agreement.

- 9.1.2 Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his/her employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the City, for the protection of employees not otherwise protected. Employers' liability shall be set at \$1,000,000/1,000,000/1,000,000.
- 9.1.3 Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:
- 9.1.3.1 Construction Manager's Comprehensive General, \$1,000,000 Each (\$2,000,000 aggregate) Liability Coverages, Bodily Injury Occurrence, & Property Damage Combined Single Limit
 - 9.1.3.2 Automobile Liability Coverages, \$1,000,000 Each Bodily Injury & Property Damage occurrence, Combined Single Limit
 - 9.1.3.3 Excess Liability, Umbrella Form \$2,000,000 Each Occurrence, Combined Single Limit
 - 9.1.3.4 Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis. There shall not be an EFIS Exclusion Endorsement on any general liability policy. The Products and Completed operations portions of the General Liability shall extend for a period of two years after the Final Acceptance of the Project by the City.
- 9.1.4 Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of his/her subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his/her subcontractors in his/her policy, as specified above.
- 9.1.5 *Intentionally omitted.*
- 9.1.6 "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- 9.1.7 Broad Form Property Damage Coverage, Products & Completed Operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- 9.1.8 Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- 9.1.9 Certificate of Insurance - The City shall be furnished proof of coverage of Insurance as follows:
- 9.1.9.1 Certificate of Insurance form will be furnished to the City. These shall be completed and signed by an authorized Resident Agent. This Certificate shall be dated and show: the name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

- 9.1.9.2 Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section.
- 9.1.9.3 The City of Kissimmee, a Municipal Corporation of the State of Florida, is to be named as an Additional Insured under all policies except for Worker's Comp.
- 9.1.9.4 The insurance evidenced by the certificate shall be primary and non-contributory to any other insurance of the certificate holder.
- 9.1.9.5 The Notice to Proceed will not be given until the Construction Manager has obtained all the insurance and Bonds required by the Contract Documents and such insurance has been approved by the City.
- 9.1.11 The Construction Manager shall not be required to provide Builder's Risk or Architects' and Engineers' Professional Liability Insurance unless specifically requested by the City. The City has Builder's Risk coverage and will provide the Construction Manager with appropriate Certificate of Insurance upon request. The City's Builder's Risk policy does not insure the Construction Manager's tools, machinery or equipment that is stored at the Project site. The Construction Manager should provide insurance in the form of an equipment floater for the Construction Manager's tools and equipment and the City should be named as an additional insured on the Construction Manager's policy with an appropriate waiver of subrogation as to any claims the Construction Manager or the Construction Manager's insurer may have against the City arising from the storage of the Construction Manager's tools and equipment. The Construction Manager shall be responsible for the first \$5,000 of any claim against the City's Builder's Risk policy.
- 9.1.12 The Construction Manager shall not allow a subcontractor to work on a project without the subcontractor carrying its own Workers Compensation and Liability insurance or the Construction Manager covering the subcontractor under its policies. This requirement is the same for each succeeding sub-tier contractor. The Construction Manager shall provide proof of such coverage to the City upon the City's request.

9.2

Waiver of Subrogation:

- 9.2.1 The Construction Manager shall ensure all insurance policies it maintains in fulfillment of its obligations under this Agreement shall contain a waiver of subrogation against the City, its officials, employees, agents and consultants. Waiver of subrogation will apply to the general liability and workers compensation policies. The City, a Municipal Corporation of the State of Florida, shall be named as an additional insured with respect to liability arising from all Services and work performed under this Agreement for automotive and general liability policies of insurance, and such policies should so state in the Certificate of Insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 9.2.2 The Construction Manager hereby waives all rights against the City for loss or damage to any equipment used in connection with a Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

9.3 Indemnification of City

Construction Manager, to the maximum extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to City) protect and hold the City, and its officers, employees and agents harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses (including, without limitation, attorneys' fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) whatsoever including, but not limited, to those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Construction Manager to comply with applicable laws, rules or regulations, (ii) the breach by Construction Manager of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of Construction Manager's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Construction Manager, its professional associates, subcontractors, agents, and employees; provided, however, that Construction Manager shall not be obligated to defend or indemnify the City with respect to any such claims or damages arising out of the City's sole negligence. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees including alleged injury to the business or any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include, without limitation, the costs incurred by the City, its agents, officials and employees in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees, costs and expenses incurred by reason of the assertion of any such claim against the City, its agents, officials or employees. The Construction Manager expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided by the Construction Manager, shall in no way limit the Construction Manager's responsibility to release, indemnify, keep and save harmless and defend the City as herein provided. The intention of the parties is to apply and construe broadly in favor of the City the foregoing provisions subject to the limitations, if any, set forth in the Florida Statutes. The Construction Manager shall obtain an endorsement or other affirmative coverage from its insurance policies required by this Agreement insuring the Construction Manager's contractual obligations under this Section. The obligations imposed by this Section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10

TERMINATION OF THE AGREEMENT AND THE CITY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

10.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the City's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the City, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

10.2 City's Right to Perform Construction Manager's Obligations and Termination by City for Cause:

10.2.1 If the Construction Manager fails to perform any of his/her obligations under this Agreement, including any obligation he assumes to perform work with his/her own forces, the City may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the City of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

- 10.2.2 The City may, without prejudice to any right or remedy and after giving the Construction Manager and his/her surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he/she may deem expedient if: the Construction Manager is adjudged bankrupt, or if he/she makes a general assignment for the benefit of his/her creditors, or if a receiver is appointed on account of his/her insolvency, or if he/she persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a breach of a material provision of the Agreement. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished, nor shall he be relieved from his/her obligations assumed under Article 6. Reasonable terminal expenses incurred by the City may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).
- 10.2.3 The City may terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method he/she may deem expedient, without prejudice to any right or remedy and after giving the Construction Manager and his/her surety, if any, seven (7) days written notice, during which period Construction Manager fails to allow access to the City. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he/she be relieved from his/her obligations assumed under Article 7. Reasonable termination expenses incurred by the City may be deducted from any payments left owing the Construction Manager (excluding moneys owed to the Construction Manager for subcontract work).
- 10.3 Termination by City Without Cause:
- 10.3.1 The City may, at any time, terminate this Agreement for the City's convenience and without cause.
- 10.3.2 Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:
- 10.3.2.1 Cease operations as directed by the City in the notice;
 - 10.3.2.2 Take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
 - 10.3.2.3 Terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for Work directed to be performed prior to the effective date of termination stated in the notice.
- 10.4 In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable fee, as defined in Article 6, overhead and profit on the Work performed.

ARTICLE 11

ASSIGNMENT AND GOVERNING LAW

- 11.1 Neither the City nor the Construction Manager shall assign his/her interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 11.2 This Agreement shall be governed by the Laws of the State of Florida. Venue shall be as specified in Section 13.2.3. The parties waive all rights to trial by jury.

ARTICLE 12

NOTICE OF CLAIM: WAIVER OF REMEDIES

- 12.1 The City's liability to the Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the City of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions, subject to Section 13.4 herein:
 - 12.1.1 All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - 12.1.2 The Construction Manager must submit a Notice of Claim to City within 20 days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
 - 12.1.3 Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the City its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the City shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the City is prejudiced by the failure of the Construction Manager to give notice.
- 12.2 After receipt of a Request for Change Order, the City, in consultation with the Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 12.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 6, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the City or the Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 12.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 5% for profit. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in such work, and eliminate any other remedies for claim, for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 13

MISCELLANEOUS

13.1 Harmony:

The Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and his/her Subcontractors for work on each Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of each Project.

The Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

13.2 Dispute Resolution:

13.2.1 All claims, disputes and other matters in question (hereinafter referred to as a "Controversy") between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.

13.2.2 Should either the City or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement between said parties, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

13.2.3 Any litigation between the City and Construction Manager (which term for the purposes of this subparagraph shall include the Construction Manager's surety), whether arising out of any claim as described in Article 12, or Controversy arising out of this Agreement or any breach thereof, shall be brought, maintained and pursued only in the Ninth Judicial Circuit Court in and for Osceola County, Florida, or in United States District Court, Middle District of Florida, Orlando Division. Construction Manager consents and submits to the jurisdiction of such courts and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

13.3 Construction Manager's Project Records and City's Auditing Rights

The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by State and Federal Law and shall be made available to the City or his authorized representative at mutually convenient times.

Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of 3 years from the date of termination of this Agreement or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. City, and any duly authorized agents or representatives of City, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by City. Further, City, and any duly authorized agents or representatives of City, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents.

If at any time, City conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged City, Construction Manager shall pay to City the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than \$10,000.00, which is defined as the total aggregate of City's reasonable audit costs incurred as a result of its audit of Construction Manager, City may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and City. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to City within 30 business days of its receipt of City's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

This Article, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Contract.

13.4 **LIMITATION OF LIABILITY**

IN NO EVENT, SHALL THE CITY BE LIABLE TO THE CONSTRUCTION MANAGER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY THE CITY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

13.5 **Cleanup and Protections**

Construction Manager agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project Site clean, City has the right, after providing a 24-hour written notice, to perform any required clean up and to backcharge the Construction Manager for the costs of such clean up. At the completion of the Work, Construction Manager shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project Site clean and ready for occupancy by City.

Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

13.6 **Ownership of Documents**

All analyses, reference data, bills, completed reports, or any other form of written instrument or document created or resulting from the Construction Manager's performance of the Services pursuant to this Agreement shall become the property of the City after payment is made to the Construction Manager for such instruments or documents.

13.7 **No Contingent Fees**

The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager 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 Construction Manager, any fee, commission, percentage, gift, or other

consideration contingent upon or resulting from award of or making of the Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

13.8 *Intentionally omitted.*

13.9 Public Entity Crimes

The Construction Manager understands and acknowledges that this Agreement will be voidable by the City in the event the conditions stated in Florida Statutes, Section 287.133 relating to conviction for a public entity crime apply to the Construction Manager.

13.10 Non-Discrimination

The Construction Manager warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

13.11 All Prior Agreements Superseded

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. No modification, amendment or alteration in the terms or conditions contained herein, unless otherwise stated herein, shall be effective unless agreed to and executed in writing by both parties to this Agreement in a form acceptable to the City.

13.12 Independent Contractor

Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Construction Manager (including its officers, employees, and agents) as the agent, representative, or employee of the City for any purpose, or in any manner, whatsoever. The Construction Manager is to be and shall remain forever an independent contractor with respect to all Services performed under this Agreement. The Construction Manager shall not pledge the City's credit or make the City a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Construction Manager shall have no right to speak for or bind the City in any manner.

13.13 Intentionally Omitted

13.14 Compliance with Laws and Regulations

In providing all Services pursuant to this Agreement, the Construction Manager shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such Services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Construction Manager.

13.15 Notices

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written

notice delivered in compliance with the provisions of this Section 13.15. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For City:

City of Kissimmee
Purchasing Department
101 Church Street
Kissimmee, Florida 34741
Attention: Purchasing Director

For Construction Manager:

Grove Construction Corporation
2340 Pleasant Hill Road
Kissimmee, FL 34741
Attention: Karen Khan, President

13.16 Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement; any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

13.17 Annual Appropriations

Construction Manager acknowledges that during any fiscal year the City shall not expend money, incur any liability, or enter into any agreement which by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, any agreement, verbal or written, the City may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The City may enter into agreements whose duration exceeds one year; however, any such agreement shall be executory only for the value of the services to be rendered which the City agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the City's performance and obligation to pay the Construction Manager under this Agreement is contingent upon annual appropriations being made for that purpose.

13.18 Unauthorized Alien(s)

The Construction Manager shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the City's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the City, the Construction Manager shall also deliver a completed and executed counterpart of the attached "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" form.

13.19 Construction Manager Representations - The Construction Manager hereby represents and warrants the following to the City:

- 13.19.1 Construction Manager is a corporation that is duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida;
- 13.19.2 Construction Manager's performance under this Agreement will not violate or breach any contract or agreement to which the Construction Manager is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation;
- 13.19.3 Construction Manager has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms;
- 13.19.4 Construction Manager now has and will continue to maintain all licenses and approvals required for conducting its business, and that it will at all times conduct its business activities in a reputable manner;
- 13.19.5 Construction Manager has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement;
- 13.19.6 Construction Manager has the personnel and experience necessary to perform all Services in a professional and workmanlike manner;
- 13.19.7 Construction Manager shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances;
- 13.19.8 Construction Manager shall, at no additional cost to the City, re-perform those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement;
- 13.19.9 Each individual executing this Agreement on behalf of the Construction Manager is authorized to do so.

13.20 Waiver

A waiver by either City or Construction Manager of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

ARTICLE 14

DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT PURCHASE PROCEDURES FOR PUBLIC PROJECTS

14.1 Direct Materials Acquisition by City - Supply Bonds:

- 14.1.1 Each Subcontractor shall include Florida State Tax and other applicable Sales Taxes for all material, supplies and equipment included in the Subcontractor's bid.
- 14.1.2 The City may, if not prohibited by Law, exercise a right to purchase directly various construction materials, supplies and equipment that may be part of the Subcontract. Any materials purchased by the City shall be referred to as "City Purchased Materials" and the responsibilities of both the City and the Construction Manager relating to such City Purchased Materials shall be governed by the terms and conditions of the "Sales Tax Exempt Purchasing Procedures for Public Projects", which

shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.

- 14.1.3 The City will issue its own Purchase Orders directly to the vendor. The City's Purchase Order shall contain or be accompanied by the City's Certificate of Entitlement and must include the City's name, address, and exemption number. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager, for prices negotiated by the Construction Manager or Subcontractor. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the City and will coordinate the purchase of the materials in a timely manner so as not to negatively impact on the performance of the construction activity of the project.
 - 14.1.4 The Subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the City shall not relieve the Subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the Subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning, and the management of all applicable warranties.
 - 14.1.5 Notwithstanding the transfer of City Purchased Materials by the City to the Subcontractor's possession, the City shall retain title to any and all City Purchased Materials.
 - 14.1.6 The Contractor shall maintain products liability insurance, which shall include City Purchased Materials, as required for the normal practice of general contracting.
 - 14.1.7 The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the City and the Construction Manager. The premium cost for this supply bond shall be included in the sub-contractor's cost. Verifying that a designated material supplier can furnish a supply bond (if required) will be the responsibility of the Subcontractor. City reserves the right to waive the requirement of providing a supply bond at the discretion of City.
 - 14.1.8 If the State of Florida assesses any Sales Tax penalties and/or interest against the Construction Manager or any of its Subcontractors or Material Suppliers relating to the direct acquisition of materials and/or equipment by City as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by City to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.
- 14.2 Sales Tax Exempt Purchasing Procedures for Public Projects:
- 14.2.1 The Subcontractor has included Florida State Sales and other applicable taxes in his/her bid for material, supplies and equipment. The City, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the form of Purchase Order attached herewith.
 - 14.2.2 Any equipment, materials or supplies directly purchased by the City that are included in the Subcontractor's contract shall be referred to as City Purchased Materials and the responsibilities of both the City/Public Entity and the Subcontractor relating to such City Purchased Materials shall be governed by the terms and conditions of these procedures.

- 14.2.3 Material suppliers shall be selected by the Subcontractor awarded the subcontract.
- 14.2.4 The Subcontractor has included the price for all construction materials plus applicable taxes in their bid. City purchasing of construction materials, if selected, will be administered on a deductive Change Order basis, the Subcontract amount shall be reduced by the net undiscounted amount of these Purchase Orders, plus all sales tax.
- 14.2.5 The Subcontractor shall provide the Construction Manager a list of all intended suppliers, vendors, and material men for consideration as City Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values and the Project schedule. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.
- 14.2.6 Upon request from Construction Manager, and in a timely manner, the Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the City and the Construction Manager, to specifically identify the materials, which City has, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:
- A. the name, address, telephone number and contact person for the material supplier
 - B. manufacturer or brand, model or specification number of the item
 - C. quantity needed as estimated by Subcontractor
 - D. the price quoted by the supplier for the materials identified therein, including freight
 - E. any sales tax associated with such quote
 - F. delivery dates as established by Subcontractor
- 14.2.7 Subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors; i.e., warranties, retainage, etc. The Purchase Order Requisition Forms are to be submitted to the City's designated representative no less than seven (7) days prior to the need for ordering such City Purchased Materials, in order to provide sufficient time for City review and approval and to assure that such Directly Purchased Materials may be directly purchased by City and delivered to the Project site without any delay to the Project.
- 14.2.8 After receipt of the Purchase Order Requisition Form, the City's Representative shall prepare Purchase Orders for equipment, materials or supplies which the City chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Subcontractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The City's Purchasing Director or their designated representative shall be the approving authority for the City on Purchase Orders in conjunction with City Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the City Purchased Materials on the delivery date provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The City's Purchase Orders shall contain or be accompanied by the City's Certificate of Entitlement and must include the City's name, address, and exemption number.
- 14.2.9 In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the City, through the Construction Manager, one or more deductive Change Orders, referencing the full value of all City-Purchased materials to be provided by each supplier from whom the City elected to purchase material directly, plus all sales tax savings associated with such materials in the Subcontractor's bid to the Construction Manager.
- 14.2.10 All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.

- 14.2.11 Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by the City in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the City due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor shall provide all services required for the unloading, handling and storage of materials through installation. The Subcontractor agrees to indemnify and hold harmless the City from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor.
- 14.2.12 As City Purchased Materials are delivered to the jobsite, the Subcontractor and the Construction Manager, as City's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Subcontractor shall assure that each delivery of City Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the City or Construction Manager may require. The Construction Manager, as City's Representative, shall verify in writing to the City the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the City through the Construction Manager for payment. The invoice shall be thereupon furnished to the City for processing and payment in the manner as all other City invoices are processed. The City shall have the right to assign City personnel to verify and audit the accuracy of all City Purchased Material documents.
- 14.2.13 The Subcontractor shall ensure that City Purchased Materials conform to the Specifications and determine, prior to incorporation into the Work, if such materials are patently defective, whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Subcontractor discovers defective or nonconformities in the City Purchased Material upon such visual inspection, the Subcontractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the City, through the Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporates City Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Subcontractor shall be responsible for all damages to the City resulting from the Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective, or nonconforming, the Subcontractor shall promptly take action to remedy the defect or nonconformance so as not to delay the work.
- 14.2.14 The Subcontractor shall maintain records of all City Purchased Materials it incorporates into the Work from the stock of City Purchased Materials in its possession. The Subcontractor shall account monthly to the City, through the Construction Manager, for any City Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials, which have been incorporated into the Work.
- 14.2.15 The Subcontractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
- 14.2.16 Notwithstanding the transfer of City Purchased Materials by the City to the Subcontractor's possession, the City shall retain title to any and all City Purchased Materials.

- 14.2.17 The transfer of possession of City-Purchased Materials from the City to the Subcontractor shall constitute a bailment for mutual benefit of the City and the Subcontractor. The City shall be considered the bailor and the Subcontractor the bailee of the City Purchased Materials. City Purchased Materials shall be considered returned to the City for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. The Bailee shall have the duty to safeguard, store and protect all City Purchased Materials.
- 14.2.18 The City shall purchase and maintain insurance pursuant to the requirements set forth in the City and Construction Manager Agreement which shall be sufficient to protect against any loss of or damage to City Purchased equipment, materials or supplies. Such insurance shall cover the full value of any City Purchased Materials not yet incorporated into the Project from the time the City first takes title.
- 14.2.19 The City shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, City Purchased Materials.
- 14.2.20 On a monthly basis, the Subcontractor shall be required to review invoices submitted by all suppliers of City Purchased Materials delivered to the Project site during that month and either concur or object to the City's issuance of payment to the suppliers, based upon the Subcontractor's records of materials delivered to the site and any defects in such materials.
- 14.2.21 In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the City, through the Construction Manager, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. Upon receipt and verification of the appropriate documentation, the City shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered and remitted directly to the supplier. The Subcontractor agrees to assist the City to immediately obtain partial or final release of lien waivers as appropriate.
- 14.2.22 At the end of the Project, any refund for surplus materials returned to suppliers, plus applicable sales tax savings amount, shall be credited with an additive Change Order to the Subcontractor's agreement with the Construction Manager. Salvage materials shall be the property of the City and stored or removed from the site by the Subcontractor at the City's direction.

ARTICLE 15

PUBLIC RECORDS

15.1 Public Record Law

- 15.1.1 The Construction Manager acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement.
- 15.1.2 The Construction Manager shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

- 15.1.3 The Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the City.
- 15.1.4 Questions regarding the application of Chapter 119, Florida Statutes, to the Construction Manager's duty to provide public records relating to this Agreement, shall be directed to the City's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

15.2 Record Retention

- 15.2.1 Upon completion of the project, the Contractor shall transfer, at no cost, to the City all public records in possession of the Construction Manager or keep and maintain public records required by the City to perform the service. If the Construction Manager transfers all public records to the City upon completion of the project, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Unless otherwise directed by the City, all records will be transferred at the conclusion of the Project.
- 15.2.2 All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 15.2.3 If the Construction Manager keeps and maintains public records upon completion of the Project, the Construction Manager shall meet all applicable requirements for retaining public records.

15.3 Record Requests

- 15.3.1 A request to inspect or copy public records relating to a City's contract for services upon notice to the Contractor of the request, the Contractor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- 15.3.2 If the Construction Manager does not comply with the City's request for records, such failure shall constitute a material breach and this Agreement shall terminate upon notice by the City. Failure to provide the public records to the City within a reasonable time may also subject the Construction Manager to penalties under Florida Statutes §119.10
- 15.3.3 If a civil action is filed against the Construction Manager to compel production of public records relating to the City's contract for services, the Court shall assess and award against the Construction Manager the reasonable costs of enforcement, including reasonable attorney's fees, if:
 - A. The Court determines that the Construction Manager unlawfully refused to comply with the public records request within a reasonable time; and
 - B. At least eight (8) business days before filing the action, the Plaintiff provided written notice of the public records request, including a statement that the Construction Manager has not complied with the request, to the City and the Construction Manager.
 - C. A notice complies with subparagraph 15.3.3(b) if it is sent to the City's custodian of public records and to the Construction Manager at the address listed on its Contract with the City or to the Construction Manager's registered agent. Such notices shall be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

- D. A Contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

EXHIBIT 16
INCORPORATION OF EXHIBITS

The following Exhibits, attached hereto, are hereby fully incorporated herein by this specific reference as if fully set forth in the body of this Agreement:

Exhibit "A"	-	RFQ2018-008 and Construction Manager's Proposal
Exhibit "B"	-	Pre-Construction Services Addendum
Exhibit "C"	-	GMP Addendum
Exhibit "D"	-	Certificate of Substantial Completion
Exhibit "E"	-	Release and Affidavit
Exhibit "F"	-	Application for Payment Form
Exhibit "G"	-	Final Payment Request Checklist / Certificate of Final Completion
Exhibit "H"	-	Change Order
Exhibit "I"	-	Allowance Authorization Release
Exhibit "J"	-	Schedule of Reimbursables
Exhibit "K"	-	Hourly Rate Schedule
Exhibit "L"	-	Affidavit Certification Immigration Laws
Exhibit "M"	-	Public Construction Bond

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

LINDA HANSELL, Clerk

By: Linda Hansell

City Clerk

Date Signed by Chairman: 7/17/2018

**CITY OF KISSIMMEE, a Municipal Corporation
of the State of Florida**

By: [Signature]

Mayor / Chairman

City of Kissimmee Commission

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
Assistant City Attorney

7/17/18
Date

ATTEST:

By: Indira Nauth

Indira Nauth
Printed Name

Grove Construction Corporation
a Florida corporation

By: Karen Khan

PRESIDENT
Title

ITEM 7.M

DEVELOPER AND ESCROW AGREEMENT BETWEEN FIRST INDUSTRIAL, L.P., KELLY PROPERTIES, CHICAGO TITLE INSURANCE COMPANY AND THE CITY OF KISSIMMEE REGARDING FLORA RIDGE PROJECT

Request

Approval of Developer and Escrow Agreement.

Explanation

As part of the original Flora Ridge DRI and subsequent PUD amendments associated with the now dissolved DRI, the B-1 Parcel is slated to construct a maximum of 400,000 gross square feet of buildings for industrial use. As part of the approval process, the main site developer, First Industrial, L.P., is obligated to enter into a Developer's Agreement with the City to memorialize the parties' respective commitments.

The 2019 PUD Amendment previously approved by the Commission on November 19, 2019 requires the site developer to build four (4) lanes of Flora Boulevard between Thacker Avenue and John Young Parkway to help alleviate traffic congestion, although the traffic study associated with the First Industrial development only requires construction of two (2) lanes. As Kelley Properties, LLP still retains ownership over a portion of Flora Boulevard, they are an additional party to this Agreement. Both First Industrial, L.P. and Kelley Properties, LLP are in the process of submitting mobility fee credit applications to the City in order to cover costs of those improvements desired by the City but not required for the development to ensure this is an equitable project for both the site developer(s) and the City.

Recommendation

Staff recommends approval of the Developer and Escrow Agreement.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter:

Attachment(s):

1. Flora Boulevard Development and Escrow Agreement (exec version)

Prepared by and Return to:
Thomas E. Francis, Esq.
LOWNDES, DROSDICK, DOSTER,
KANTOR & REED, P.A.
215 N. Eola Drive
Orlando, FL 32801-2028

FLORA BOULEVARD
DEVELOPMENT AND ESCROW AGREEMENT

THIS FLORA BOULEVARD DEVELOPMENT AND ESCROW AGREEMENT (“**Agreement**”) is made and entered into as of the ____ day of _____, 2021 (“**Effective Date**”) by and among **FIRST INDUSTRIAL, L.P.**, a Delaware limited partnership qualified to do business in the State of Florida, having an address of 1 North Wacker Drive, Suite 4200, Chicago, IL 60606 (“**First Industrial**”), **KELLEY PROPERTIES, LLP**, a Florida limited partnership, formerly known as **KELLEY PROPERTIES**, a Florida general partnership, whose address is c/o David Smith, 4100 Canoe Creek Road, St. Cloud, FL 34772 (“**Kelley**”), the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida (“**City**”), and **CHICAGO TITLE INSURANCE COMPANY**, whose address is c/o Sam Sobering, 2400 Maitland Center Parkway, Suite 110, Maitland, FL 32751 (“**Escrow Agent**”). First Industrial, Kelley and the City are individually referred to as a “**Party**” or “**party**” and are collectively referred to as the “**Parties**” or “**parties**”.

RECITALS

WHEREAS, First Industrial is the owner of certain real property more particularly described on **Exhibit “A”** attached hereto and incorporated herein by reference hereto (the “**First Industrial Property**”); and

WHEREAS, Kelley is the owner of certain real property more particularly described on **Exhibit “B”** attached hereto and incorporated herein (the “**Kelley Property**”); and

WHEREAS, the Kelley Property and the First Industrial Property are subject to the terms and conditions of that certain PUD Amendment for Flora Ridge DRC #19-115 To Update Use, Design & Development Standards approved by the City on November 19, 2019, a certified copy of which was recorded December 23, 2019, in Official Records Book 5646, Page 1011, of the Public Records of Osceola County, Florida (the “**Amended PUD**”); and

WHEREAS, First Industrial plans to develop the First Industrial Property for industrial purposes with a maximum of 400,000 gross square feet of building area for industrial purposes (including, without limitation, distribution, warehouse, assembly and packaging uses), with related infrastructure and accessory uses, but excluding self-storage (the “**First Industrial Development**”); and

WHEREAS, Section 17.h of the Amended PUD requires the construction of four (4) lanes of Flora Boulevard from Thacker Avenue to John Young Parkway (the “**Roadway**”) to City standards by the Developer (i.e., Kelley) or Site Developer (who, for purposes of this Agreement, is First Industrial) in accordance with the Amended PUD; and

WHEREAS, Kelley and First Industrial have agreed that First Industrial, as Site Developer under the Amended PUD, shall construct the Roadway, subject to the terms and conditions of this Agreement; and

WHEREAS, Kelley and First Industrial previously entered into that certain Flora Boulevard Easement and Escrow Agreement dated July 30, 2020 and recorded on July 31, 2020 in Book 5765, Page 2943 of the Public Records of Osceola County, Florida (the “**Prior Road Agreement**”), for the development and construction of the Roadway and related improvements, and the Parties intend to amend, restate and supersede the Prior Road Agreement with this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement in order to (a) confirm that the construction of the Roadway and related improvements pursuant to this Agreement complies with and satisfies the terms and conditions of the Amended PUD, and (b) memorialize the mobility impact fee credits (“**Mobility Impact Fee Credits**”) available to First Industrial and/or Kelley for portions of the construction of the Roadway, the dedication of right-of-way for the Roadway, and the dedication of land for stormwater facilities serving the Roadway; and

WHEREAS, First Industrial desires to commence construction of (a) the Roadway; (b) the proposed stormwater facilities necessary to accept stormwater from the Roadway (the “**Roadway Drainage Facilities**”); and (c) “dry” and “wet” utilities (sewer, water, power, phone, cable, etc.) (the “**Utility Facilities**”) to serve the First Industrial Property (the Roadway, Roadway Drainage Facilities, and Utility Facilities are collectively referred to as the “**Improvements**”); and

WHEREAS, First Industrial has deposited with Escrow Agent the funds necessary to pay the costs of construction of the Improvements; and

WHEREAS, First Industrial has also requested that Kelley grant to First Industrial over a portion of the Kelly Property, limited to that area of real property expressly identified herein, the necessary easements to (a) construct the Improvements, and (b) utilize the Improvements until such time as the Improvements are transferred and accepted by the City or the applicable utility provider; and

WHEREAS, Escrow Agent has been selected by the Parties to hold the Escrow Funds (defined below) in escrow pursuant to the terms of this Agreement and to disburse such funds as more particularly detailed herein.

NOW THEREFORE, the Parties agree as follows:

1. Recitals; Effect on Prior Road Agreement. The foregoing recitals are hereby incorporated by reference as if fully restated herein. Kelley and First Industrial hereby acknowledge and agree that the Prior Road Agreement is hereby fully amended and restated by this Agreement, and that the terms and conditions of this Agreement fully supersede all of the terms

and conditions of the Prior Road Agreement. Upon the execution of this Agreement by the Parties, the Prior Road Agreement shall be terminated and of no further force and effect whatsoever.

2. Approval of Plans; Location of Roadway and Roadway Drainage Facilities. The Parties hereby agree on and approve the conceptual location of the Roadway and Roadway Drainage Facilities in the locations depicted on Exhibit “C” attached hereto and incorporated herein. The final location and configuration of the Roadway and Roadway Drainage Facilities shall be as determined pursuant to the required approvals for the Roadway and the Roadway Drainage Facilities by the City and other governmental authorities having jurisdiction. Such required approvals include, without limitation, the approved final plat of the First Industrial Property and the Kelley Property (the “**Plat**”), and final construction plans; the preliminary plat submitted to the City is attached hereto as Exhibit “D” for reference.

First Industrial agrees to deliver the final construction plans for the Improvements to Kelley and Kelley shall have ten (10) business days to review and respond, failure of which, the construction plans shall be deemed automatically approved. Kelley shall have no objection rights with respect to the location of the Roadway and Roadway Drainage Facilities unless they materially differ from the locations shown in Exhibit “C”. If Kelley provides any objection to the construction plans for the Roadway and/or the Roadway Drainage Facilities, Kelley shall present such objection in writing with as much detail as possible and the Parties agree to work in diligent and good faith efforts to resolve said objection within fifteen (15) days of the Kelley providing said objections. The plans as approved by First Industrial and Kelley shall be submitted to the City for approval and permitting. For the purposes of this Agreement, the term “**Plans**” means the final construction plans for the Improvements as approved by First Industrial and Kelley pursuant to this Section 2 and as permitted by the City and other governmental authorities having jurisdiction over the construction of the Improvements. The **Plans** shall amend and supersede Exhibit “C” and Exhibit “B” for purposes of any obligations, commitments or entitlements that may arise as a result of this Agreement. First Industrial shall construct the Improvements in a good and workmanlike manner, in accordance with the Plans, and shall be responsible for promptly curing all defects in construction at First Industrial’s (or its contractor’s) sole cost and expense during any warranty period provided for by the contractor or during the term of any maintenance bond required by the City (unless such warranties and/or maintenance bonds are assigned and/or issued to the City for the purpose of the City curing all defects in construction).

3. Completion of Improvements.

(a) First Industrial, as “Site Developer” under the Amended PUD and the initial “Constructing Party” under this Agreement, agrees to commence construction of the Improvements within one (1) year from the Effective Date of this Agreement (“**Commencement Deadline**”), subject to a thirty (30) day written notice and cure period from Kelley. If First Industrial fails to commence construction on or before the Commencement Deadline and after written notice and opportunity to cure, Kelley shall have the right, but not the obligation to elect to become the “Constructing Party” of the Improvements by providing written notice to First Industrial of its election to become the Constructing Party (“**Election Notice**”). Upon providing the Election Notice under this subsection (a), Kelley shall commence construction of the Improvements within ninety (90) days of such election and shall diligently proceed with completion of said Improvements in accordance with the terms of this Agreement on or before the

two-year anniversary date of the Election Notice (“**Kelley Completion Deadline**”), failure of which, First Industrial shall have the right to provide an Election Notice and complete construction.

(b) Provided that First Industrial commences construction of the Improvements on or before the Election Notice, First Industrial shall have seven hundred thirty (730) days from the date it commences construction to complete construction of the Improvements in a good and workmanlike manner, and obtain acceptance of the Improvements by the City (“**Completion Deadline**”). If construction is underway at the Completion Deadline, First Industrial shall be entitled to a one-time extension of the Completion Deadline for an additional one hundred eighty-five (185) days. If First Industrial has commenced construction of the Improvements but fails to complete the Improvements and have the same accepted by the City prior to the expiration of the Construction Deadline, as may be extended, Kelley shall have the right, but not the obligation, at any time after the expiration of the Completion Notice to provide an Election Notice and upon doing so, Kelley shall immediately proceed with diligent and good faith efforts to complete the Improvements and have the same accepted by the City within a reasonable time-frame as agreed to by Vanasse Hangen Brustlin, Inc., the record project engineer (the “**Project Engineer**”) plus six (6) months.

(c) If Kelley undertakes construction to complete the Improvements by properly and timely providing an Election Notice to First Industrial as provided above: (i) Kelley shall do so using the Escrow Funds (defined in Section 12 below) in accordance with the disbursement procedures set forth in Section 12; (ii) Kelley shall be obligated to diligently commence and complete construction of the Improvements and have same accepted by the City upon completion; and (iii) Kelley shall perform all other obligations required of the First Industrial Property and of First Industrial by the City under this Agreement. First Industrial shall be entitled to any mobility/impact fee credits that are available based on or attributable to the construction of the Improvements, and Kelley shall promptly assign to First Industrial any such credits that are available to Kelley (and Kelley shall pursue such credits on First Industrial’s behalf if such credits are available); provided that to the extent Kelley expends funds to construct the Improvements that are not paid from the Escrow Funds, any mobility/impact fee credits available from the City for such additional expenditures shall belong to Kelley. Notwithstanding anything herein to the contrary, any mobility/impact fee credits available related to the value of the land dedicated to the City, or encumbered by a drainage easement, that a Party is able to obtain from the City based on or attributable to the value of such land, shall belong to such Party.

(d) For the purposes of this Agreement, the Party constructing the Improvements is sometimes referred to as the “**Constructing Party**”, and the other Party (i.e., whichever of First Industrial or Kelley is not constructing the Improvements) is sometimes referred to as the “**Non-Constructing Party**”. Upon the demand of the Constructing Party, the Non-Constructing Party shall assign all plans, contracts, and permits to the Constructing Party to enable the Constructing Party to complete construction of the Improvements and have the same accepted by the City.

(e) The time periods for performance by First Industrial and Kelley under this Agreement (including, without limitation, any deadlines relating to the commencement or the completion of construction of the Improvements) shall be extended for events of Force Majeure (defined in Section 20 below) and/or Permitted Delay (defined in Section 20 below). If the

Constructing Party is constructing the Improvements and construction stops, or has elected to construct the Improvements and fails to commence construction, by an applicable commencement deadline or by an applicable completion deadline, for a period of greater than sixty (60) days, for any reason other than a Force Majeure event or a Permitted Delay event, the Non-Constructing Party may serve a written cure notice on the Constructing Party and if construction is not resumed or started within thirty (30) days of the cure notice the Non-Constructing Party may issue an Election Notice provided it diligently and in good faith proceeds with the construction of the Improvements.

4. Easements.

(a) Grant of Temporary Access and Construction Easement. Kelley hereby gives, grants, conveys, and declares for the benefit of the owners, agents, contractors, consultants employees, and successors and assigns of the First Industrial Property, a temporary, non-exclusive ingress/egress and construction easement (“**Construction Easement**”) in favor of First Industrial to enter upon the Roadway and Roadway Drainage Facilities and twenty-five (25) feet of the portions of the Kelley Property adjacent to the Roadway and Roadway Drainage Facilities (the “**Construction Easement Area**”) as reasonably necessary to: (i) construct/install the Improvements; (ii) construct the Side-Slope Improvements (defined below), if required; and (iii) exercise the rights granted under this Agreement. Such Construction Easement rights granted herein shall include, without limitation, the staging of construction activities, movement of construction material, construction personnel and construction equipment, storage of construction materials, parking of automobiles and construction equipment, and access across the Construction Easement Area to perform such work necessary to construct the Improvements provided that such rights are exercised in a manner so as to minimize the interruption or adverse impact on the activity and operation of the Kelley Property. This Construction Easement shall automatically terminate upon completion of the Improvements and acceptance of same by the City, County, and/or the applicable utility provider for maintenance.

(b) Grant of Drainage Easement. Kelley hereby gives, grants, conveys, and declares for the benefit of the owners, agents, contractors, consultants employees, and successors and assigns of the First Industrial Property a temporary, non-exclusive drainage easement, upon, over, across, in, under and through the Roadway Drainage Facilities as may be constructed and installed on the Kelley Property by First Industrial, in order to allow for the drainage of stormwater that originates from the Roadway to drain into the Roadway Drainage Facilities (“**Drainage Easement**”). The Drainage Easement shall automatically terminate upon such time as the City accepts the Roadway Drainage Facilities.

(c) Grant of Access Easement. Kelley hereby gives, grants, conveys, and declares for the benefit of the owners, agents, contractors, consultants, employees, and successors and assigns of the First Industrial Property, a temporary, non-exclusive access easement upon, over, across, in, under and through the Roadway as constructed and installed on the Kelley Property by First Industrial for ingress and egress and passage of pedestrians and motor vehicles (“**Access Easement**”). This Access Easement shall automatically terminate upon such time as the City accepts the Roadway as public right-of-way.

(d) Grant of Utility Easement. Kelley hereby gives, grants, conveys, and declares for the benefit of the owners, agents, contractors, consultants employees, and successors and assigns of the First Industrial Property a temporary, non-exclusive utility easement (“**Utility Easement**”): (i) upon, over, across, in, under and through the Roadway and Kelley Property (no more than ten (10) feet adjacent to the Roadway) to allow for the First Industrial Property to utilize and benefit from the Utility Facilities installed within the Roadway and on the Kelley Property; (ii) upon, over, across, in, under and through the ten (10) feet of those portions of the Kelley Property that are contiguous to the Roadway to allow for the installation of Utility Facilities not located within the Roadway. This Utility Easement shall automatically terminate upon such time as the City, and/or the respective utility provider, accepts the utilities and the City and utility provider are granted all required reasonable easements and bills of sale, which required reasonable easements and bills of sale shall be granted by Kelley.

(e) Grant of Grading/Slope Easement. To the extent determined necessary by First Industrial during construction of the Roadway, Kelley hereby grants, conveys, declares and establishes for the benefit, use and enjoyment of First Industrial a temporary non-exclusive grading and perpetual side slope easement over, upon and across Kelley Property (not to exceed twenty (20) feet from the back of curb of Roadway that is for the purposes hereinafter stated (“**Slope Easement**”), all subject to the terms, conditions and limitations set forth herein. The purpose of the Slope Easement shall be to permit the First Industrial, through itself, its agents, contractors, consultants and employees to enter upon the Kelley Property immediately adjacent to the Roadway (not more than twenty (20) feet) to tie the grades of the Roadway with the adjacent Kelley Property consistent with the approved grading plans (the “**Side-Slope Improvements**”). First Industrial shall be responsible at its sole cost and expense for the creation of the Side-Slope Improvements, if required. To the extent any Side-Slope Improvements are required by the grading plans and constructed by First Industrial, Kelley agrees to convey to the City, if required by the City, a reasonable Slope Easement over the Side-Slope Improvements within ten (10) days of the City’s request.

(f) Kelley Easements and Covenants. If Kelley becomes the Constructing Party, within five (5) days of Kelley’s request, First Industrial, or its successor in title, shall grant, on the First Industrial Property and only to the extent necessary for Kelley to construct the Improvements (and such other improvements and facilities as are detailed in the approved plans and applicable permits), construction, access, utility, slope, and drainage easements with similar general parameters, terms and conditions contained in subsections (a) - (e) above. If Kelley invokes such easement rights across the First Industrial Property, Kelley shall become subject to, and perform/comply with, the same covenants required of First Industrial in Sections 8, 9, 10 and 11 below with respect to the exercise of its easement rights and entry onto First Industrial Property and such covenants shall be included in said easements. First Industrial agrees this provision shall run with title to the First Industrial Property, and any such easements granted in accordance with this paragraph will, for purposes of priority, relate back to the recording date and time of this Agreement, and have priority over all liens and encumbrances recorded subsequent to the recording date and time of this Agreement.

(g) Termination of Easements. Upon automatic termination of any of the easements described in Sections 4(a), 4(b), 4(c) and 4(d) above, the Parties shall cooperate

diligently and in good faith to execute and record an acknowledgment and confirmation of such termination among the public records of the County.

5. Dedication of Roadway to City. The Parties acknowledge and agree that the required right-of-way for the Roadway shall be dedicated to the City in and by means of the Plat, in accordance with the City's standard requirements for the dedication of right-of-way by plat.

6. Dedication of Drainage Easements to City. The Parties acknowledge and agree that the required drainage easements for the Roadway shall be dedicated to the City in and by means of the Plat, in accordance with the City's standard requirements for the dedication of drainage easements by plat.

7. Additional City Requirements. In addition to the dedications described in Sections 5 and 6 above, the Parties acknowledge that the City may require a Phase I environmental study, a title insurance commitment covering the Roadway and/or the Roadway Drainage Facilities, and/or the execution of a "disclosure of beneficial interest" form required by Section 286.23, Florida Statutes (collectively, the "**City Conveyance Requirements**"), and the City may require other items during the review and approval process (the "**Additional City Requirements**"). The Parties agree to provide the City Conveyance Requirements, to the extent reasonable, to the City, if requested, and promptly to satisfy any such Additional City Requirements, to the extent reasonable, which may occur during the review and approval process. First Industrial agrees to pay for the cost and expense associated with any title search and Phase 1 to satisfy the City Conveyance Requirements and Kelley hereby grants First Industrial and its consultants and license to enter upon portions of the Kelley Property, no more than twenty-five (25) feet from the Roadway or Roadway Drainage Facilities, to perform such testing as may be required by the City.

8. Indemnity/Insurance. First Industrial shall use commercially reasonable efforts to ensure that the construction of the Improvements does not unreasonably disturb, disrupt or damage the Kelley Property. First Industrial shall indemnify and hold Kelley harmless from and against any and all loss, claim and/or damage done to all or any portion of the Kelley Property and for any personal injury, property damage, wrongful death or other damages proximately caused by or from First Industrial or First Industrial's contractors, agents, subcontractors, suppliers, materialmen, or consultants entry, omissions, or activities on the Kelley Property following the Effective Date. First Industrial shall carry liability insurance of not less than One Million Dollars (\$1,000,000.00) and shall obtain a liability insurance certificate naming Kelley as an additional insured party.

If Kelley becomes the Constructing Party, Kelley shall use commercially reasonable efforts to ensure that the construction of the Improvements does not unreasonably disturb, disrupt or damage the First Industrial Property. Kelley shall indemnify and hold First Industrial harmless from and against any and all loss, claim and/or damage done to all or any portion of the First Industrial Property and for any personal injury, property damage, wrongful death or other damages proximately caused by or from Kelley or Kelley's contractors, agents, subcontractors, suppliers, materialmen, or consultants entry, omissions, or activities on the First Industrial Property following the Effective Date. Kelley shall carry liability insurance of not less than One Million Dollars (\$1,000,000.00) and shall obtain a liability insurance certificate naming First Industrial as an additional insured party.

9. Restoration. First Industrial shall return any areas of the Kelley Property utilized by First Industrial or its contractors, subcontractors, suppliers, or consultants in its construction of the Improvements to a good and useable condition substantially consistent with the condition of the Kelley Property at the time of First Industrial's entry. For example, if First Industrial places rock in the Construction Easement to support storage of construction equipment, First Industrial must remove the rock, grade and seed with grass.

If Kelley becomes the Constructing Party, Kelley shall return any areas of the First Industrial Property utilized by Kelley or its contractors, subcontractors, suppliers, or consultants in its construction of the Improvements to a good and useable condition substantially consistent with the condition of the First Industrial Property at the time of Kelley's entry. For example, if Kelley places rock in the Construction Easement to support storage of construction equipment, Kelley must remove the rock, grade and seed with grass.

10. Environmental. First Industrial shall not allow any hazardous material to be deposited on the Kelley Property in violation of applicable law in connection with the performance under the terms of this Agreement. The term "Hazardous Material" means any flammable explosives, radio-active materials, asbestos, electrical transformers, batteries, and any paints, solvents, chemicals, petroleum products, or other manmade materials with hazardous or carcinogenic or toxic characteristics including without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", or other similar terms, by any federal, state or local environmental statute, regulation or ordinance presently or hereafter in effect, as such statute, regulation or ordinance may be amended from time to time.

If Kelley becomes the Constructing Party, Kelley shall not allow any Hazardous Material to be deposited on the First Industrial Property in violation of applicable law in connection with the performance under the terms of this Agreement.

11. Construction Liens. No rights created herein to enter upon the Kelley Property shall permit or empower First Industrial to encumber the Kelley Property with liens arising from the construction, installation, maintenance, repair and or replacement of the improvements contemplated herein. In this regard, First Industrial shall not suffer or permit any construction lien to be placed upon or against the Kelley Property, and, in case of any such construction lien attaching, First Industrial shall immediately pay (or discharge by bond) and remove the same. If any construction liens associated with design or construction of the Improvements are filed against the Kelley Property, and, thereafter First Industrial fails to pay (or discharge) and remove the same within ten (10) days of its actual notice that said lien has arisen, then Kelley, at its election, may pay and satisfy the same, or transfer the same to other security, and in such event First Industrial, or its contractor, subcontractor, agent, lienor, or affiliated licensee, as applicable (but in all instances First Industrial shall be jointly and severally liable to Kelley with First Industrial's contractor, subcontractor, agent, lienor or affiliated licensee), shall reimburse Kelley, as applicable, any and all sums so paid, including interest at the highest rate allowable by Florida law accruing from the date of payment and including all reasonable costs and expenses incurred by Kelley in connection therewith, including attorneys' fees incurred before or at trial or at any re-hearing or appeal. In addition, Kelley shall have the right to file a lien on First Industrial Property for any

such funds advanced by Kelley to remove a construction lien, and foreclose said lien as permitted with a mortgage under Florida law.

If Kelley becomes the Constructing Party, no rights created herein to enter upon the First Industrial Property shall permit or empower Kelley to encumber the First Industrial Property with liens arising from the construction, installation, maintenance, repair and or replacement of the improvements contemplated herein. In this regard, Kelley shall not suffer or permit any construction lien to be placed upon or against the First Industrial Property, and, in case of any such construction lien attaching, Kelley shall immediately pay (or discharge by bond) and remove the same. If any construction liens associated with design or construction of the Improvements are filed against the First Industrial Property, and, thereafter Kelley fails to pay (or discharge) and remove the same within ten (10) days of its actual notice that said lien has arisen, then First Industrial, at its election, may pay and satisfy the same, or transfer the same to other security, and in such event Kelley, or its contractor, subcontractor, agent, lienor, or affiliated licensee, as applicable (but in all instances Kelley shall be jointly and severally liable to First Industrial with Kelley's contractor, subcontractor, agent, lienor or affiliated licensee), shall reimburse First Industrial, as applicable, any and all sums so paid, including interest at the highest rate allowable by Florida law accruing from the date of payment and including all reasonable costs and expenses incurred by First Industrial in connection therewith, including attorneys' fees incurred before or at trial or at any re-hearing or appeal. In addition, First Industrial, shall have the right to file a lien on the Kelley Property for any such funds advanced by First Industrial to remove a construction lien, and foreclose said lien as permitted with a mortgage under Florida law.

12. Project Costs, Escrow and Disbursement.

(a) First Industrial has deposited the amount of Two Million Five Hundred Thousand (\$2,500,000.00) with Escrow Agent (the "**Escrow Funds**"). The parties acknowledge and agree that the Escrow Funds represent one hundred twenty-five percent (125%) of the estimated total costs of construction of the Improvements (including contingency amounts) (the "**Estimated Budget**"). Within five (5) business days after the award of the construction contract to the Contractor (defined below) for the Improvements, which construction contract shall establish the final budget for the Improvements (including contingency amounts) (the "**Final Budget**"), First Industrial shall deposit with Escrow Agent the amount required, if any, such that the Escrow Funds shall represent 125% of the Final Budget (and in the event 125% of the Final Budget is less than \$2,500,000.00, then Escrow Agent shall promptly disburse to First Industrial that portion of the Escrow Funds which exceeds 125% of the Final Budget). The Parties agree that the construction costs in the Final Budget shall reference FDOT itemized unit costs for Osceola County when used to calculate performance guarantee estimates. By execution hereof, Escrow Agent acknowledges receipt of the Escrow Funds and agrees to hold such funds in escrow and administer and disburse such funds pursuant to and strictly in accordance with the terms and conditions of this Agreement. Upon receipt of the Escrow Funds, Escrow Agent shall deposit the Escrow Funds in Escrow Agent's trust account. Escrow Agent shall hold the Escrow Funds in its Trust Account at a federally-insured financial institution. Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and no duties or obligations shall be read into or implied from this Agreement with respect to the Escrow Agent. Upon Escrow Agent's disbursement of the Escrow Funds in accordance with the provisions hereof, Escrow Agent's duties

and responsibilities with respect to the Escrow Funds shall cease, and Escrow Agent thereafter shall be released of all liability hereunder in connection therewith.

(b) Not more than once per month during the term of construction, Constructing Party shall deliver an application for a progress payment to Escrow Agent and the Non-Constructing Party setting forth the amount due Constructing Party from the Escrow Funds for that portion of the Improvements work completed during the time period which is the subject of such application for payment; which amount shall equal ninety percent (90%) of the product of (i) the initial total amount of the Escrow Funds for any particular line item (excluding the general contingency line item) multiplied by (ii) the percentage of the Improvements work for that line item represented by the completed work which is the subject of such application for a progress payment. With each application for a progress payment, Constructing Party shall deliver to the Non-Constructing Party and Escrow Agent: (x) a certificate issued by the Project Engineer confirming the percentage of completion of the Improvements work line item set forth in such application for payment; (y) Constructing Party's affidavit, and the Constructing Party's contractor's ("**Contractor**") affidavit, affirming that all persons in privity with Constructing Party or the Contractor providing labor, materials and services in connection with the Improvements work have been, or will be, paid or specifically identifying those persons who are currently unpaid; and (z) copies of the conditional partial/final releases of lien from all subcontractors, suppliers and other parties filing a "Notice to Owner" with respect to all work which was the subject of the preceding application for payment.

(c) Within five (5) business days after receipt by the Non-Constructing Party of each application for payment and accompanying information, the Non-Constructing Party shall provide written notice to Escrow Agent in the event it objects to the application for payment submitted by the Constructing Party or the amount requested by the Non-Constructing Party thereunder. The Non-Constructing Party agrees that it will object to an application for payment or the amount requested by the Constructing Party thereunder only in good faith and for good cause. Non-Constructing Party's failure to provide written notice to Escrow Agent of the Non-Constructing Party objection to an application for payment or the amount requested thereunder within five (5) business days after receipt of the Constructing Party application for payment shall be deemed to constitute the Non-Constructing Party's approval of such disbursement. Accordingly, Escrow Agent shall be and is hereby authorized to make a disbursement of the Escrow Funds to the Constructing Party in accordance with any application for payment hereafter submitted by the Constructing Party in accordance with this Agreement, provided, however, that the Non-Constructing Party does not object in accordance herewith to such application for payment or the amount requested by the Constructing Party thereunder within five (5) business days after the Non-Constructing Party's receipt of such application for payment. If the Non-Constructing Party timely objects to such application, and provides written notice describing, with specificity, such objection, then Escrow Agent shall not make any disbursements of the Escrow Funds until such objection is resolved in good faith by the Constructing Party and the Non-Constructing Party (provided that any amount that is not in dispute shall be disbursed in accordance with the application).

(d) Upon completion of the Improvements, Constructing Party shall request the final payment from the Escrow Funds for any unreimbursed construction costs delineated on the Budget. Such disbursement shall be in accordance with the Constructing Party's final application

for payment, which shall include, in addition to the information required in clauses (x) through (z) of subparagraph (b) above, (i) the Project Engineer's certification that the Improvements are substantially complete in accordance with the Plans; (ii) a final contractor's affidavit from the Contractor, prepared in accordance with subsection 713.06(3), Florida Statutes, affirming that all bills for labor, materials and services relating to the Improvements have been paid in full; (iii) a certificate of completion or the legal equivalent issued by the City evidencing the completion and approval of the Improvements; and (iv) all other documents reasonably necessary to evidence the completion and acceptance of the Improvements (all of such documents being collectively referred to herein as the "**Completion and Acceptance Documents**"). Constructing Party shall also furnish to the Non-Constructing Party a final waiver or release of lien executed by each subcontractor, supplier or other party previously serving a "Notice to Owner" in connection with the Improvements, waiving and releasing any lien or claim for any and all work, labor or materials furnished in connection with the Improvements. Any Escrow Funds attributable to lien claimants identified in the final contractor's affidavit shall be reserved by Escrow Agent and not disbursed until final disposition of such lien claimant's claim or until such liens are transferred from the applicable real property to other security pursuant to Section 713.24, Florida Statutes.

Following the aforesaid final payment, and payment of any other costs related to the Improvements, the funds remaining in escrow for the Improvements, including but not limited to any unused contingency funds or allowance funds, shall be distributed back to First Industrial by line item, in accordance with the allocation stated in the Budget for each line item.

(e) Notwithstanding anything in this Section 12 to the contrary, First Industrial shall be entitled to satisfy its obligation to provide security for construction of the Improvements by providing a payment and performance bond in favor of Kelley in a form acceptable to Kelley and the City in their commercially reasonable discretion (the "**Bond**"). Such Bond may be provided either as of the Effective Date in lieu of the Escrow Funds or after the Effective Date to replace the Escrow Funds. In the event First Industrial provides the Bond after the Effective Date in accordance with this Section 12(e): (i) notice of the issuance of such Bond shall be delivered by First Industrial to Escrow Agent (with a copy of such notice delivered to Kelley and the City); (ii) within five (5) business days after receipt of such notice, Escrow Agent shall disburse and deliver the Escrow Funds to First Industrial; and (iii) thereafter the security provided by First Industrial to Kelley for construction of the Improvements shall be in accordance with the terms and conditions of the Bond.

(f) In addition to the foregoing, the Constructing Party shall provide a one (1) year maintenance bond to the City concurrently with the acceptance and dedication of the Roadway and Roadway Drainage Facilities to the City (the cost of which maintenance bond shall be included in the Final Budget).

13. Mobility Impact Fee Credits. In consideration for First Industrial's agreement to construct the Roadway and the Roadway Drainage Facilities as described in this Agreement, and to the extent the road construction and dedication of land by First Industrial exceed its proportionate share of required mitigation, then consistent with City Code of Ordinances Section 13-3-16, the City will provide Mobility Impact Fee Credits to First Industrial for such portion of (i) the Roadway and the Roadway Drainage Facilities, and (ii) the dedication of portions of the First Industrial Property for the Roadway and the Roadway Drainage Facilities.

In consideration for Kelley's agreement to dedicate land needed for the Roadway and the Roadway Drainage Facilities as described in this Agreement, and to the extent the dedication of land by Kelley exceeds its proportionate share of required mitigation as consistent with City Code of Ordinances Section 13-3-16, the City will provide Mobility Impact Fee Credits to Kelley Properties for the dedication of portions of the Kelley Property for the Roadway and the Roadway Drainage Facilities.

Upon reasonable acceptance of the Developer Contribution Credits (as defined by Section 13-3-16) estimate for First Industrial, the City shall credit on its books to the account of First Industrial, for purposes of City Code of Ordinances Chapter 13-3 (Mobility Fees), amounts equal to the Developer Contribution Credits allocable to First Industrial. Thereafter, as Mobility Impact Fees become payable from time to time in connection with the First Industrial Development, and if so instructed by First Industrial, City shall deduct such amounts payable from First Industrial's account. First Industrial also shall be entitled to assign any of the Mobility Impact Fee Credits to other property owners or developments within the City located within four (4) miles of the First Industrial Property as depicted on **Exhibit "E"** attached hereto and incorporated herein. Such assignment(s) shall be made in writing and presented to the City at such time that Mobility Impact Fees are due on such other projects.

Upon reasonable agreement between the City and Kelley as to the fair market value of the land dedicated by Kelley for the Roadway (as defined by Section 13-3-16), the City shall credit on its books to the account of Kelley, for purposes of City Code of Ordinances Chapter 13-3 (Mobility Fees), amounts equal to the fair market value of the land dedicated by Kelley. Thereafter, as Mobility Impact Fees become payable from time to time in connection with the Flora Ridge PUD, and if so instructed by Kelley Properties, City shall deduct such amounts payable from Kelley's account. Kelley shall be entitled to assign any of the Mobility Impact Fee Credits to other property owners or developments within the City located within four (4) miles of the Kelley Property as depicted on **Exhibit "E"** attached hereto and incorporated herein. Such assignment(s) shall be made in writing and presented to the City at such time that Mobility Impact Fees are due on such other projects. Kelley and the City hereby stipulate and agree as between them that for purposes of determining Kelley's proportionate share of the land dedicated by Kelley for the Roadway, Kelley shall receive credit for the dedication of that amount of land required to build two (2) of the four (4) lanes of the Roadway located on the Kelley Property.

14. Notices. Any notice or other communication required or permitted to be given, answered or made by a party hereto to the other party or to the Escrow Agent shall be in writing and shall be deemed to have been properly given or sent as of the date and time the same are personally delivered, transmitted electronically (i.e. facsimile device) with the delivery date and time noted in a confirmation receipt, or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with FedEx or other overnight delivery service from which a receipt may be obtained, as addressed as follows:

As to First Industrial:

FIRST INDUSTRIAL, L.P.
Attn: Chris Willson
1 North Wacker Drive, Suite 4200
Chicago, IL 60606

With a Copy to: Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Attn: Tara Tedrow, Esq.
215 N. Eola Drive
Orlando, FL 32801

As to Kelley: David Smith
4100 Canoe Creek Road
St. Cloud, FL 34772

With a Copy to: The Ort Law Firm
Attn: Joseph Ort, Esq.
1305 East Plant Street
Winter Garden, FL 34787

As to the City: City of Kissimmee, Florida
Attn: Kalanit Oded
101 Church Street
Kissimmee, FL 34741

As to Escrow Agent: Chicago Title Insurance Company
Attn: Sam Sobering
2400 Maitland Center Parkway, Suite 110
Maitland, FL 32751

15. Covenants Running with the Land/Successors and Assigns. This Agreement shall be a covenant running with the land and run with title to the First Industrial Property and the Kelley Property and shall inure to the benefit and detriment of the foregoing properties and their owners, tenants, heirs, legal representatives, successors, and assigns. First Industrial understands that Kelley may deed the real property that consists of its portions of the Roadway, Roadway Drainage Facilities, and the easements contemplated herein to a single purpose entity. First Industrial consents to such assignment provided that prior to such assignment the single purpose entity agrees to assume in writing all of the obligations contained in this Agreement, including the granting of all easement contemplated herein.

16. Termination of Agreement. Upon the Improvements contemplated herein being completed as evidenced by a certificate of completion from the City and all Improvements (with necessary easements, if any) being transferred or dedicated to the City, the Escrow Agent shall record a release of this Agreement ("Release") that all obligations and easements contained herein have been satisfied and terminated. The Escrow Agent shall, prior to recording said Release, provide written notice to each of the Parties informing the Parties of its determination that one or more of the Parties has satisfied its obligations hereunder, and in the event one of the Parties does not object within then (10) days of the written notice, Escrow Agent shall be authorized to record the Release in the Public Records of Osceola County, Florida. Notwithstanding the foregoing, the following terms shall survive termination of this agreement: Section 8 (Indemnity/Insurance), Section 11 (Construction Liens), Section 18 (Time is of the Essence), Section 22 (Dispute Resolution), Section 23 (Enforcement and Remedies), Section 24 (Attorneys' Fees), Section 25

(Governing Law/Venue), Section 26 (Limitation of Encumbrance), Section 27 (Good Faith Cooperation on Release), Section 29 (Waiver), Section 31 (Jury Trial Waiver), and any party's obligation under of this Agreement to reimburse another party.

17. Recordation of Agreement. An executed original of this Agreement shall be promptly recorded after the Effective Date, at First Industrial's expense, in the Public Records of Osceola County.

18. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

19. Further Assurances and Documentation. In addition to the acts recited herein to be performed by the Parties, the First Industrial and Kelley agree to cooperate and perform all further acts as may reasonably be required to perform the tasks contemplated in this Agreement. First Industrial and Kelley understand and agree that it is extremely difficult for such Parties to contemplate every perceivable request and document that may be required in connection with fulfilling the terms and conditions of this Agreement, including, without limitation, the assignments set forth in Section 23 below, so First Industrial and Kelley each agree to cooperate diligently and in good faith with one another, including, without limitation, (a) signing such documents as reasonably required by the City, County, governmental/quasi-governmental agency, or applicable utility provider to effectuate the terms of this Agreement, and (b) signing such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of such Parties hereunder and the consummation of the transactions contemplated hereby. First Industrial and Kelley each agree to sign such requested reasonable documentation within five (5) business days of such written request.

For example, First Industrial and Kelley acknowledge that a permit or permits from South Florida Water Management District ("**District**") and/or the Army Corps of Engineers ("**ACOE**") will be necessary for the construction of the Improvements and that some of the Improvements must be accepted by the District and/or the ACOE. As a result, Kelley agrees to sign such applications and documentation reasonably necessary for First Industrial to obtain such permits and such other documents as required by the District and/or the ACOE.

20. Force Majeure, Permitted Delay. For the purposes of this Agreement, the term "**Force Majeure**" means a required stoppage or delay of construction work by reason of: (a) acts of nature, war, civil commotion, pandemic, riots, work stoppages arising out of collective bargaining strikes, or (b) adverse weather, or damage to work in progress by reason of fire, flood or windstorm beyond the reasonable control of a Party (other than financial reasons), and/or due to any other circumstance not within the reasonable control of the performing Party (other than financial reasons) and not within the reasonable control of the performing Party's contractors, subcontractors, suppliers or consultants (other than financial reasons).

For the purposes of this Agreement, the term "**Permitted Delay**" means a required stoppage or delay of construction work by reason of: (i) unreasonable delay or withholding of an approval by a Party to items within this Agreement that requires such Party's approval; (ii) construction or completion delays caused by a governmental or utility authority unreasonably delaying approval of a permit or any other approval required to construct and receive final approval

of the Improvements (provided the Constructing Party requested the permit or approval at a reasonable time and made reasonable efforts to timely obtain the approval); (iii) delays caused by unforeseen conditions not identified in any geotechnical report or otherwise on the Plans or associated permits; and (iv) delays caused by unforeseen delays caused by permitting authority revising scope in the field.

Constructing Party must notify the Non-Constructing Party in writing (which may be via email) within seven (7) business days of a Force Majeure or Permitted Delay claim (a "Claim"). Claim notification must include: date, time, duration, narrative of activities affected onsite, weather report if weather related and pictures of site if appropriate. The Non-Constructing Party must reply to the Constructing Party's Claim notification within two (2) business days, and the Non-Constructing Party must reply with acceptance, rejection, or additional clarification needed. If additional clarification is needed, this notification process restarts. Construction Party must keep a delay log that includes pending, accepted and rejected Claims. The Parties will work together in good faith to attempt to resolve all Claims.

21. Amendment. Any amendment to this Agreement shall only be effective if in writing, executed by all parties hereto, and recorded in the Public Records of Osceola County.

22. Dispute Resolution. With regard to any material disputes between or among the Parties arising out of this Agreement, the Parties agree to work together in good faith to resolve all disputes promptly. Any party to this Agreement may demand in writing that any of the other parties to the dispute meet upon reasonable notice as to time and place to resolve the dispute. Following receipt of this demand, each party receiving the notice will promptly comply with and will negotiate in good faith to resolve the dispute. If the parties do not resolve the dispute after such a meeting, the provisions of Section 23 shall govern.

23. Enforcement and Remedies. If any party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the non-defaulting party shall have the right, at its option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein, to (a) bring an action for the recovery of damages in a court of competent jurisdiction, and/or (b) bring an action for specific performance in a court of competent jurisdiction. The failure to enforce any of the terms or provisions of this Agreement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

If Kelley elects to complete (or cause the completion of) the Improvements, Kelley shall complete (or cause to be completed) the Improvements in a good and workmanlike manner in accordance with the Plans and this Agreement; and First Industrial shall, upon Kelley's request, assign to Kelley all of First Industrial's right, title and interest in the Escrow Funds, the Plans and all contract(s) for performing the Improvements work; and First Industrial shall cooperate in good faith and use commercially reasonable efforts to cause its Contractor to cooperate with Kelley in performing and completing the remainder of the Improvements work. By virtue of such assignments, Kelley shall be entitled to receive and use the Plans and all related work product, permits, and other items of documentation prepared or issued in connection with the Plans.

24. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in any bankruptcy case or proceeding, at trial or on appeal or at any rehearing.

25. Governing Law/Venue. This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action arising out of this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida.

26. Limitation of Encumbrance. Notwithstanding anything herein to the contrary, this Agreement shall not encumber or impose any obligation on any portion of either the First Industrial Property or the Kelley Property beyond twenty-five (25) feet from the boundary lines of the Roadway or Roadway Drainage Facilities.

27. Good Faith Cooperation on Release. In the event a portion of the Construction Easement, Side Slope Easement, Access Easement or Utility Easement is not needed for construction of the Improvements, First Industrial and Kelley agree to promptly release such portions from this Agreement.

28. Appointment of Escrow Agent. Kelley, First Industrial and the City hereby designate, constitute and appoint Escrow Agent as the "Escrow Agent" under this Agreement, and Escrow Agent hereby accepts such designation and appointment. Escrow Agent shall not be responsible for the genuineness of any certificate or signature, and may rely exclusively upon and shall be protected when acting upon any written notice, affidavit, request, consent or other instrument believed by Escrow Agent, in good faith, to be genuine or to be signed or presented by the proper person, or to be otherwise duly authorized or properly made. Escrow Agent shall have no responsibility under this Agreement except for the performance of its express duties hereunder. No amendment or modification of this Agreement or waiver of its terms by the Parties shall affect the rights and duties of Escrow Agent hereunder unless Escrow Agent's written consent thereto shall have been first obtained. Escrow Agent shall not be liable for the performance of its duties hereunder except for negligence or willful misconduct.

Escrow Agent shall not be required to institute or defend any action involving any matters referred to herein or which affect Escrow Agent's duties under this Agreement unless and until requested to do so by any party to this Agreement, and then only upon receiving full indemnity, in substance, form and content satisfactory to Escrow Agent, against any and all claims, liabilities and expenses in relation thereto. In the event of any dispute among the parties hereto with respect to Escrow Agent or Escrow Agent's duties under this Agreement, Escrow Agent may refrain from acting until required to do so by a final and non-appealable order of a court of competent jurisdiction. Kelley and First Industrial, jointly and severally, agree to indemnify and hold Escrow Agent harmless from any and all costs or expenses in connection with the discharge of Escrow Agent's duties and obligations hereunder. The Parties further covenant and agree to release, discharge and exonerate Escrow Agent in full upon the satisfactory completion by the Escrow Agent of its duties and obligations hereunder.

The Escrow Agent's only duties and obligations under this Escrow Agreement are those specifically expressed herein with respect to the holding and disposition of the Escrow Funds in accordance with the terms and conditions of this Escrow Agreement. In the event of any litigation between Kelley and First Industrial wherein Escrow Agent is made a party to such litigation by virtue of acting as Escrow Agent under this Agreement or otherwise, or in the event of any litigation wherein Escrow Agent shall interplead any of the Escrow Funds into the registry of a court of competent jurisdiction, then Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs to be charged and assessed as court costs in favor of the prevailing party.

Kelley and First Industrial hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees, which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder, provided that such losses, claims, damages, liabilities and expenses were not incurred by Escrow Agent as a result of or due to its willful default or negligence. Escrow Agent shall itemize all such fees and costs in a monthly statement sent to Kelley and First Industrial. Without limiting the foregoing, Kelley and First Industrial agree that all fees and costs charged by the Escrow Agent shall be paid equally by Kelley and First Industrial.

In the event of a dispute between any of the parties hereto sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all the Escrow Funds, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof

29. Waiver. The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by said party of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any such right, power or privilege by said party.

30. Interpretation. The parties acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Agreement and they agree to the enforcement of any and all of these provisions and executes this Agreement with full knowledge of the same. Any typewritten or handwritten provisions inserted in this Agreement which are initialed by the parties shall control over all printed provisions of this Agreement in conflict therewith. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "but not limited to," and (e) references to "hereunder" or "herein" relate to this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection, schedule and exhibit references are to this Agreement unless otherwise specified. Any accounting term used herein that is not specifically defined herein shall have the

meaning given to it under GAAP. The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect. Each party and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any rules of construction requiring that ambiguities are to be resolved against the party which drafted the Agreement or any exhibits attached hereto shall not be applicable in the construction and interpretation of this Agreement or any exhibits attached hereto. The term “sole discretion” with respect to any determination to be made a party under this Agreement shall mean the sole and absolute discretion of the party, without regard to any standard of reasonableness or other standard by which the determination of the party might be challenged.

31. Jury Trial Waiver. **The Parties hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement and any document executed in connection herewith or related hereto, or any course or conduct, course of dealing, statements (whether oral or written) or actions of either party. This provision is a material inducement for the parties to enter into this transaction.**

32. Estoppel Certificates. Each of the Parties agrees that within thirty (30) days after written request from the other Party, it shall deliver a written statement which may be relied upon by the requesting party or any successor, assignee, transferee, mortgagee or tenant of the requesting party, setting forth whether or not the requesting party has fully complied with the provisions of this Agreement, and if not, setting forth in reasonable detail the nature of any violations. Failure to deliver such statement within the said thirty (30) day period shall be conclusive evidence against the party failing to deliver such notice that the requesting party has fully complied with its obligations under this Agreement, insofar as such obligations affect the other Party, as of the date the request was made.

33. Counterparts. This Agreement may be executed in one or more counterparts by the parties. All counterparts shall be construed together and shall constitute one agreement. Each counterpart shall be deemed an original hereof notwithstanding that fewer than both of the Parties may have executed it. The Parties hereto are hereby authorized to rely upon the signature of each person on this Agreement that is delivered by electronic mail as constituting a duly authorized, actual, current delivery of this Agreement with original ink signatures of each such person. Delivery of a copy of this Agreement bearing an original signature by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means of transmission intended to preserve the original graphic and pictorial appearance of a document, shall have the same effect as physical delivery of the paper document bearing the original signature. Any copy of this Agreement reproduced from electronic means that bears the original graphic and pictorial appearance of the parties’ signatures shall be as effective as an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

FIRST INDUSTRIAL, L.P., a Delaware limited partnership qualified to do business in the State of Florida

By: First Industrial Realty Trust, Inc.,
a Maryland corporation, its sole
general partner

Witness

Print Name

Witness

Print Name

By: _____
Name: _____
As: Authorized Signatory

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021 by _____, as Authorized Signatory of First Industrial Realty Trust, Inc., a Maryland corporation, the sole general partner of FIRST INDUSTRIAL, L.P., a Delaware limited partnership qualified to do business in the State of Florida, on behalf of said limited partnership, who is personally known to me or has produced _____ as identification.

Notary Public

(Print, Type or Stamp Name)
My Commission Expires: _____

KELLEY PROPERTIES LLP, a Florida limited liability partnership, successor by conversion to Kelley Properties, a Florida general partnership

By: I.B.K. LTD., a Florida limited partnership,
General Partner

By: DVG MANAGEMENT, INC., a
Florida corporation, General Partner

Witness

By: _____
David A. Smith, VicePresident

Print Name

Witness

Print Name

By: VIDA RANCH, LTD., a Florida limited partnership, General Partner

By: DVG MANAGEMENT, INC., a
Florida corporation, General Partner

Witness

By: _____
David A. Smith, Vice-
President

Print Name

Witness

Print Name

By: SOUTHPORT CATTLE, LTD., a Florida
limited partnership, General Partner

By: DVG MANAGEMENT, INC.,
a Florida corporation, General Partner

Witness

By: _____
David A. Smith, Vice-
President

Print Name

Witness

Print Name

By: KENANSVILLE CATTLE, LTD., a Florida
limited partnership, General Partner

By: DVG MANAGEMENT, INC.,
a Florida corporation, General Partner

Witness

By: _____
David A. Smith, Vice-
President

Print Name

Witness

Print Name

STATE OF FLORIDA

COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021 by Gary A. Kelley, President of DVG Management, Inc., a Florida corporation, the General Partner of each of (1) I.B.K., Ltd., a Florida limited partnership, (2) Vida Ranch Ltd., a Florida limited partnership, (3) Southport Cattle, Ltd., a Florida limited partnership, and (4) Kenansville Cattle, Ltd., a Florida limited partnership, on behalf of each of the said limited partnerships, and each of the said limited partnerships being a General Partner of Kelley Properties LLP, a Florida limited liability partnership, successor by conversion to Kelley Properties, a Florida general partnership, on behalf of said limited liability partnership, who is personally known to me or has produced _____ as identification.

Notary Public

(Print, Type or Stamp Name)

My Commission Expires: _____

CITY OF KISSIMMEE

By: _____

Title: _____

Date: _____

ATTEST: _____

By: _____

City Clerk

Approved as form and legality

City Attorney

Date

STATE OF FLORIDA

COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021 by _____, as _____, who is personally known to me or has produced _____ as identification.

Notary Public

(Print, Type or Stamp Name)

My Commission Expires: _____

JOINDER OF ESCROW AGENT

Escrow Agent joins in the execution of this Agreement solely for the purpose of agreeing to act as Escrow Agent hereunder, as set forth herein.

**CHICAGO TITLE INSURANCE
COMPANY**

By: _____
Name: _____
Date: _____

EXHIBIT "A"**Legal Description of First Industrial Property**

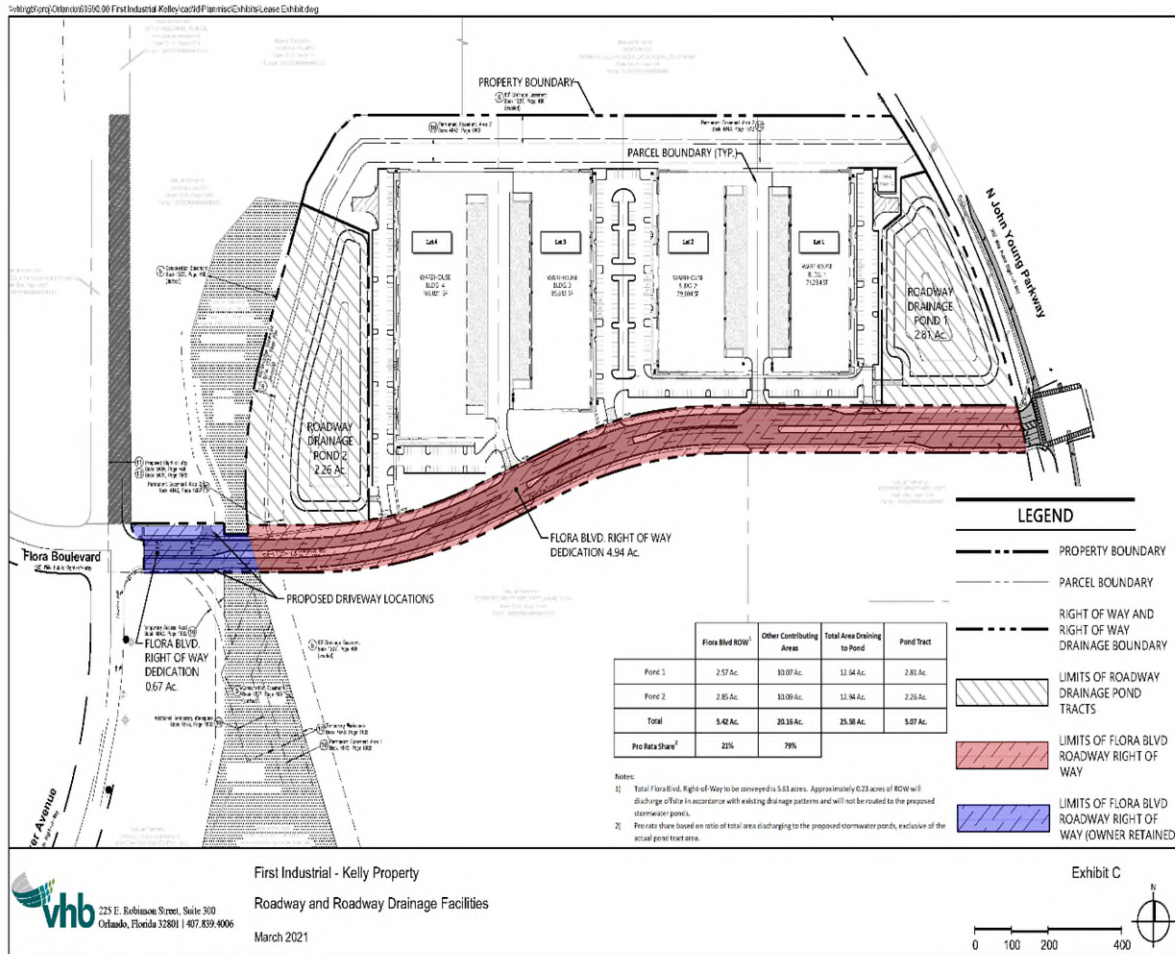
That portion of the Northwest 1/4 of Section 9, Township 25 South, Range 29 East, Osceola County, Florida, more particularly described as follows:

Commencing at the Northwest Corner of said Section 9; thence, S 89°59'12" E, along the North line of Section 9, a distance of 54.99 feet; thence, S 89°56'48" E, continuing along said line, a distance of 615.08 feet to the Place of Beginning; thence, S 89°55'47" E, a distance of 1462.93 feet to the West line of N. John Young Parkway; thence, S 38°20'51" E, a distance of 53.17 feet; thence, along the arc of a curve to the right, having a radius of 1696.94 feet, a chord of 753.47 feet being S 26°22'26" E, an arc length of 759.80 feet; thence N 90°00'00" W, a distance of 760.68 feet; thence, S 89°53'02" W, a distance of 50.00 feet; thence, along the arc of a curve to the left having a radius of 1258.64 feet, a chord of 477.00 feet, bearing S 78°57'39" W, an arc length of 479.90 feet; thence, S 68°02'17" W, a distance of 174.11 feet; thence, along the arc of a curve to the right, having a radius of 1338.64 feet, a chord of 507.31 feet, bearing S 78°57'40" W, an arc length of 510.40 feet; thence, S 89°53'02" W, a distance of 154.85 feet; thence, N 19°53'23" W, a distance of 85.37 feet; thence, along the arc of a curve to the right, having a radius of 860.00 feet, a chord of 394.79 feet, bearing N 05°35'51" E, an arc length of 398.34 feet; thence, N 18°52'00" E, a distance of 372.97 feet; thence N 36°13'01" E, a distance of 132.12 feet; thence, N 53°45'30" E, a distance of 67.37 feet to the Place of Beginning.

EXHIBIT "B"**Legal Description of Kelley Property**

That portion of the Northwest $\frac{1}{4}$ of Section 9, Township 25 South, Range 29 East, Osceola County, Florida, more particularly described as follows:

Beginning at the Northwest Corner of said Section 9; thence, S 89°59'12" E, along the North line of said Section, a distance of 54.99 feet; thence, S 00°05'50" E, a distance of 460.03 feet; thence, S 89°59'12" E, a distance of 168.85 feet; thence, S 19°56'49" W, a distance of 13.17 feet; thence, S 01°46'11" E, a distance of 57.62 feet; thence, S 09°08'34" E, a distance of 189.14 feet; thence, S 27°08'26" E, a distance of 132.91 feet; thence, S 00°21'50" E, a distance of 57.53 feet; thence, N 89°50'33" E, a distance of 65.61 feet; thence, S 19°53'23" E, a distance of 85.37 feet; thence, along the arc of a curve to the left having a radius of 845.00', a chord of 106.38 feet, bearing S 16°53'28" E, an arc length of 106.45 feet; thence, S 20°29'03" E, a distance of 375.34 feet; thence, N 89°59'28" W, a distance of 559.31 feet to the East line of Thacker Avenue; thence, along the arc of a curve to the left having a radius of 1260.00', a chord of 348.55 feet, bearing N 08°01'24" E, an arc length of 349.67 feet; thence, N 00°01'23" E, a distance of 70.41 feet; thence, along the arc of a curve to the right, having a radius of 35.00', a chord of 49.53 feet, bearing N 45°03'57" E, an arc length of 55.03 feet; thence, N 00°01'23" E, a distance of 70.41 feet; thence, along the arc of a curve to the left, having a radius of 35.00', a chord of 49.53 feet, bearing N 44°56'03" W, an arc length of 55.03 feet; thence, N 89°58'37" W, a distance of 61.85 feet to the West line of Section 9; thence, N 00°09'54" E, along said West line, a distance of 869.98 feet to the Place of Beginning.

EXHIBIT "C"**Conceptual Depiction of Roadway and Roadway Drainage Facilities**

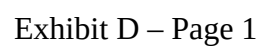




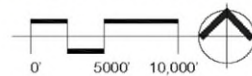
EXHIBIT “E”

Area of Assignment of Mobility Impact Fee Credits



1 **FIRST INDUSTRIAL - ICI KELLEY**
SITE LOCATION
 Osceola County ■ Florida

NOTE: THE INFORMATION PROVIDED ON THIS DOCUMENT SHOULD BE TREATED AS CONFIDENTIAL OR MAY BE SUBJECT TO CHANGE © 2020 VHB



vhb
 DATE: February, 2021
 PROJECT NUMBER: 63590.00
 225 E. Robinson St., Suite 300 | Orlando, Florida 32801
 Tel: 407.839.4006 | Fax: 407.839.4008 | www.vhb-orlando.com
 \\vhb\gb\proj\Orlando\63590.00 First Industrial-Kelley\

Exhibit E

ITEM 8.A

ANNUAL ADVISORY BOARD APPOINTMENTS/REAPPOINTMENTS AND A VACANCY ON THE BOARD OF ADJUSTMENT AND HISTORIC PRESERVATION BOARD

Request

Commission requested to appoint two replacements to fill the vacancy on the Board of Adjustment and Historic Preservation Board as well as reappointments or replacements to fill annual Board terms expiring May 31, 2021.

Explanation

On April 16th Development Services staff received a resignation letter from Board of Adjustment member Luis A. Martinez, Sr. who was hired by the City and is therefore no longer eligible to serve on the Board and staff received notification on May 14th that Board Member John Link had passed away unexpectedly. Both of these vacancies occurred outside of the annual appointment process.

In additional, the annual board appointments are due for terms expiring May 31, 2021 on the following boards:

Board of Adjustment
Historic Preservation Board
Parks and Recreation Advisory Board
Planning Advisory Board

Appointments are assigned to individual Commissioners in order of rotation. Seat # 1 was assigned the Board of Adjustment vacancy and Seat # 2 has been assigned the Historic Preservation vacancy in the rotation. All qualified applications will be provided to each of the Commissioners making these appointments. The Annual Board Appointments will start with Seat # 2 and continue through the last appointment on the Planning Advisory Board.

Each Board has individual requirements for residency as well as additional positions such as architects, engineers, business owners, etc. You will find the qualifications for the board member on the attached list as well as the responses on whether they would like to continue serving on their current board.

The Commission will have 30-days to make these appointments or an extension will be necessary. If no extension is requested, the appointment will automatically rollover to the next Commissioner in the rotation.

Recommendation

Staff recommends the Commission make appointments to fill both existing vacancies and reappoint or replace members with terms expiring on May 31, 2021.

REQUESTED CITY COMMISSION ACTION:

Appoint/Reappoint

City of Kissimmee

Department: City Manager
Presenter: Mike Steigerwald

Attachment(s):

1. Appointments by Seat 6-01-2021

APPOINTMENTS BY SEAT

DATE: June 1, 2021

Commission Seat	Board (Position Filled)	Residency Requirement	Appointment/ Extension Expires	Request Reappointment
Seat # 1 Castano	Board of Adjustment Luis A. Martinez, Sr. <i>Non-Resident</i> (Licensed General Contractor)	All members of the Board may be residents or non-resident (non-residents must either own property or maintain a business in with in the City Board: At least two members of the Board should hold a valid Florida license as an Architect, Surveyor, Engineer or General Contractor.	06/01/2021	No (Resigned)
Seat # 2 Ortiz	Historic Preservation Board John Link <i>Non-Resident</i> (Architect) (Business Owner)	5 of 7 Members must be City Residents (Non-Residents must either own real property or maintain a business office within the City, with preference in a historical district) Wherever possible, Architect, Landscape Architect, Planner, Structural Engineer, Historian, Folklorist, Curator, Archaeologist related disciplines, Realtor, Broker or related financial, Operate a business in the City, 2 General Public with special interest or knowledge in historical preservation.	07/06/2021	No (Deceased)
ANNUAL APPOINTMENTS				
Seat # 2	Board of Adjustment Niles Chalifoux <i>Resident</i>	All members of the Board may be residents or non-resident (non-residents must either own property or maintain a business in with in the City Board: At least two members of the Board should hold a valid Florida license as an Architect, Surveyor, Engineer or General Contractor.	06/15/2021	Yes

Seat # 1	Historic Preservation Board Penny Dickerson <i>Resident</i> (Business Person)	5 of 7 Members must be City Residents (Non-Residents must either own real property or maintain a business office within the City, with preference in a historical district) Wherever possible, Architect, Landscape Architect, Planner, Structural Engineer, Historian, Folklorist, Curator, Archaeologist related disciplines, Realtor, Broker or related financial, Operate a business in the City, 2 General Public with special interest or knowledge in historical preservation.	06/15/2021	Yes
Seat # 2	Parks & Recreation Advisory Board Roy Oddo <i>Resident</i>	7 of 9 Members must be City Residents (Non-Residents must reside in Osceola County) Board: No member may serve on any other appointed board of the City	06/15/2021	Yes
Seat # 1	Planning Advisory Board Thomas Kapp <i>Resident</i> (Maintains Business Office)	5 of 7 Members must be City Residents (Non-Residents must either own real property or maintain a business office in the City)	06/15/2021	Yes