



**(REVISED) 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, DECEMBER 21, 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 SERVICE AWARDS FOR OCTOBER, NOVEMBER AND DECEMBER

Request that the City Commission join the City Manager in recognizing employees who have reached milestones in years of service.

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

None.

5. PUBLIC HEARINGS

5.A PUBLIC HEARING - PROGRAM YEAR 2020 COMMUNITY DEVELOPMENT BLOCK GRANT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT

Approval of the 2020 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).

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 AUTHORIZATION TO TRANSFER AMERICAN RESCUE PLAN - CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

Authorization to transfer funds from the American Rescue Plan - Coronavirus Local Fiscal Recovery Funds.

7.B DONATION OF VEHICLE TO THE KISSIMMEE MAIN STREET PROGRAM

The Police Department is requesting City Commission approval to donate a John Deere Gator to the Kissimmee Main Street Program.

7.C LICENSE AGREEMENT BETWEEN GREEN MEADOWS FARM LTD AND THE CITY OF KISSIMMEE TO OPERATE AT LANCASTER RANCH PARK

Approval of a License Agreement with Green Meadows Farm to operate an educational farm and ranch attraction at Lancaster Ranch Park.

7.D MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KISSIMMEE AND SKYVIEW KISSIMMEE DEVELOPER LLC REGARDING THE BEAUMONT DEVELOPMENT SITE

Approval of the Master Development Agreement between the City of Kissimmee and Skyview Kissimmee Developer LLC regarding the purchase and redevelopment of the Beaumont Development Site. Authorization for the City Manager or designee to execute Property Use License Agreement and Temporary Construction Easements, and any other documents that may be necessary to allow the Developer access to the property prior to the sale.

7.E APPROVAL OF A SPACE USE PERMIT FOR LEAD AIR

Request Commission approval of a Space Use Permit for Lead Air.

7.F REQUEST TO APPROVE PROPERTY CONVEYANCE DOCUMENTS RELATING TO OSCEOLA COUNTY'S BILL BECK BOULEVARD - SEGMENT B ROADWAY IMPROVEMENT PROJECT

This request is for City Commission approval to dedicate utility easements to the Kissimmee Utility Authority and the Toho Water Authority to help complete the expansion and improvement of Segment B of the Bill Beck Boulevard County expansion project.

7.G AUTHORIZATION TO ACCEPT 2021-2022 VICTIMS OF CRIME ACT (VOCA) GRANT FUNDING

Approval to accept the U.S. Department of Justice (DOJ) 2021-22 Victims of Crime Act (VOCA) Grant from the State of Florida, Office of the Attorney General, Bureau of Advocacy and Grants Management, in the amount of \$85,253.

7.H CHANGE ORDER NO.3 WITH GOMEZ CONSTRUCTION FOR THE SECURITY IMPROVEMENTS AT KISSIMMEE GATEWAY AIRPORT

Approval of Change Order No. 3 with Gomez Construction for the Airport Security Improvements Project in the amount of \$6,975.00 using project AP2103 funds.

7.I APPROVAL OF SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF KISSIMMEE AND REDFLEX TRAFFIC SYSTEMS, INC. AUTHORIZING A SHORT-TERM 90-DAY EXTENSION

Approval of a second amendment to the agreement between the City and Reflex Traffic Systems, Inc authorizing a 90-day extension of the original contract.

7.J ACCEPTANCE OF ASSIGNMENT OF GROUND LEASE AGREEMENT WITH SKY WAY ENTERPRISES, INC.

Approval of a ground lease agreement with Sky Way Enterprises, Inc., for 3031 Patrick Street, Kissimmee Gateway Airport.

7.K COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM YEAR 2021 FUNDING AGREEMENT

Acceptance of the Program Year 2021 Community Development Block Grant (CDBG) from the U.S. Department of Urban Development (HUD) in the amount \$769,084,

approval to execute the funding agreement and approval for the Mayor, City Manager or Development Services Director to execute any CDBG related documents and sub-recipient agreements according to the levels of signature authority consistent with the City's Procurement Policy.

7.L AMENDED AND RESTATED AIRPORT LEASE AGREEMENT WITH SANDPIPER FLORIDA REAL ESTATE HOLDINGS, LLC

Approval of a lease modification for Sandpiper Florida Real Estate Holdings, LLC.

7.M COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS ROUND 3 (CDBG-CV 3) FUNDING AGREEMENT

Acceptance of the allocation of the Community Development Block Grant Coronavirus Round 3 (CDBG-CV3) HUD funds in the amount \$737,760, approval to execute the funding agreement, and approval for the Mayor, City Manager or Development Services Director to execute any CDBG-CV related documents and sub-recipient agreements according to the levels of signature authority consistent with the City's Procurement Policy after review by the City Attorney or her designee.

7.N AMENDMENTS TO THE HOME CONSORTIUM PROJECT AGREEMENT (THIRD AMENDMENT) AND THE HOME PROGRAM AGREEMENT (FOURTH AMENDMENT) FOR THE REHABILITATION OF THE OAK LEAF LANDINGS APARTMENTS

Commission approval of the Third Amendment to the HOME Consortium Project Agreement between Osceola County and the City of Kissimmee and the Fourth Amendment to the HOME Project Agreement between the City of Kissimmee, Osceola Council on Aging, Inc., and Kissimmee Oaks Housing I, Inc. for the rehabilitation of the Oak Leaf Landings Apartments.

7.O PROFESSIONAL ENGINEERING CONTINUING SERVICES CONTRACT EXTENSIONS

Approval to extend the Professional Engineering Continuing Services Contracts with the following firms: (1) Askey Hughey, Inc., (2) RS&H, Inc., (3) Burgess & Niple, Inc., (4) T. Y. Lin International, Inc., and (5) CDM Smith, Inc. for one year.

7.P AMENDMENT NO.1 TO THE AGREEMENT WITH YSI INCORPORATED FOR STORMWATER MONITORING, MAINTENANCE, AND DATA COLLECTION SERVICES

Approval to amend and increase the current contract price of \$241,797.00 by \$33,908.34 to provide additional stormwater monitoring, maintenance, and data collection services.

7.Q PROFESSIONAL SURVEYING CONTINUING SERVICES CONTRACT EXTENSION WITH JOHNSTON'S SURVEYING, INC.

Approval to extend the Professional Surveying Continuing Services Contract with Johnston's Surveying, Inc. for one-year.

7.R WORK ORDER NO. 1 TO MICHAEL BAKER INTERNATIONAL, INC. FOR PROFESSIONAL ENGINEERING SERVICES IN SUPPORT OF THE 20-YEAR STORMWATER NEEDS ANALYSIS REQUIRED BY THE FLORIDA LEGISLATURE

Approval of Work Order No. 1 to Michael Baker International, Inc. for professional engineering services in support of the 20-year stormwater needs analysis required by the Florida Legislature.

7.S APPROVAL OF AN AGREEMENT FOR CODE ENFORCEMENT SPECIAL MAGISTRATE SERVICES

Approval of an Agreement between the City of Kissimmee and Clifford Shepard of Shepard, Smith, Kholmyer and Hand, PA for Special Magistrate services.

7.T APPROVAL TO SUBMIT A 2021 AFRICAN AMERICAN CULTURAL AND HISTORICAL GRANT THROUGH THE FLORIDA DIVISION OF HISTORIC RESOURCES FOR IMPROVEMENTS TO CHAMBERS PARK COMMUNITY CENTER

Approval to submit a 2021 African American Cultural and Historical Grant through the Florida Division of Historic Resources for improvements to Chambers Park Community Center.

7.U ACCEPTANCE OF ASSIGNMENT OF AIRPORT GROUND LEASE AGREEMENT WITH ZELIFF PROPERTIES, INC.

Approval of a ground lease agreement with Zeliff Properties, Inc., for 3955 Merlin Drive at the Airport.

7.V APPROVAL TO SELL HANGAR AT 4134 AVIATION DRIVE TO CIRRUS AIRCRAFT AND APPROVE MEMORANDUM OF LEASE

Approval to sell an aircraft hangar at 4134 Aviation Drive to Cirrus Design Corporation, D/B/A Cirrus Aircraft and to provide the City Manager with authorization to sign any documents needed for the closing of the sale.

7.W APPROVAL OF A RESOLUTION ESTABLISHING THE CITY'S INTENT TO SECURE TAX-EXEMPT FINANCING TO REIMBURSE THE CITY FOR CAPITAL EXPENDITURES RELATED TO SEVERAL CAPITAL IMPROVEMENT PROJECTS

Approval of a reimbursement Resolution to establish the City's intent to procure future tax exempt financing for capital expenditures in connection with several capital improvement projects.

8. DISCUSSION ITEMS**8.A CITIZEN REQUEST TO ADDRESS THE COMMISSION REGARDING DOWNTOWN HOLIDAY DECORATIONS AND EVENTS**

The request is from Carlos Ramirez of Aviles Hair Studio to address the Commission regarding downtown holiday decorations and events.

8.B AFFORDABLE HOUSING INCENTIVES AND RECOMMENDATIONS FROM THE AFFORDABLE HOUSING ADVISORY COMMITTEE (AHAC) FOR THE 2021 CALENDAR YEAR

Accept the recommended incentive strategies made by the Affordable Housing Advisory Committee (AHAC) during the 2021 calendar year and direct staff to follow up with the implementation of each recommendation accordingly.

8.C KISSIMMEE UTILITY AUTHORITY BOARD OF DIRECTORS REAPPOINTMENT

The request is for City Commission consideration of the reappointment of an incumbent member of the Kissimmee Utility Authority (KUA) Board of Directors whose term expires in 2022.

8.D ADVISORY BOARD APPOINTMENT - VACANCY ON THE PARKS & RECREATION ADVISORY BOARD

Commission requested to appoint a replacement to fill the vacancy on the Parks and Recreation Advisory Board due to the resignation of Hendrith Smith. The term for this vacancy is due to expire May 31, 2023.

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, (407) 518-2309.

ITEM 3.A**SERVICE AWARDS FOR OCTOBER, NOVEMBER AND DECEMBER****Request**

Request that the City Commission join the City Manager in recognizing employees who have reached milestones in years of service.

Explanation**Five**

Patrick Smith

Police

Emily Kaluszkina

Police

Roxane Walton

Human Resources

Ten

Andrea Campbell

Parks & Recreation

Fifteen

Antonio Aviles

Police

Duane Fay

Police

Vincent Hickey

Public Works & Engineering

Suzette Moran Hall

Fire

Jeff Pon

Parks & Recreation

Dawn Stapf

Parks & Recreation

Dave Stoloff

Information Technology

Arnaldo Vega

Public Works & Engineering

Twenty

Chris Succi

Police

Twenty-five

James Napier

Police

Thirty

Deborah Ashley

Police

Thirty-Five

Bethany Santiago

Police

Department: Human Resources & Risk Management

Presenter: Mike Steigerwald

Attachment(s):

None

ITEM 5.A**PUBLIC HEARING - PROGRAM YEAR 2020 COMMUNITY DEVELOPMENT BLOCK GRANT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT****Request**

Approval of the 2020 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).

Explanation

The Consolidated Annual Performance and Evaluation Report (CAPER) is the document required annually by the Department of Urban Development (HUD) that evaluates the City of Kissimmee's use of Community Development Block Grant (CDBG) funds for the previous year. It provides a summary of the accomplishments and an accounting of the allocation and expenditure of the CDBG funds. For Program Year 2020, the City of Kissimmee received \$725,168 in CDBG funds and the following accomplishments were met:

- \$40,170 to the Community Hope Center to assist chronically homeless individuals and families through entry into a coordinated assessment system that provides ranking, referrals, and assistance such as rapid rehousing. Accomplishments: 159 persons were assisted.
- \$40,000 to the Community Hope Center to provide rental and mortgage assistance to low income households to promote stable housing. Accomplishments: 10 households were assisted.
- \$70,000 for code enforcement activities intended to assist in the preservation of the existing housing stock and relevant commercial structures. Accomplishments: 790 cases were handled. Of those, 344 were residential.
- \$250,000 to the Public Works and Engineering Department to pay for the design and survey for the sidewalk extension project. This project will extend the sidewalk located on the south side of Hill Street (approximately 1100 ft of new sidewalk). Accomplishments: None. A Substantial Amendment was made in PY 2020 to delete this project from the 2020 Annual Action Plan and re-allocate the funding to the Hudson Street Improvement project.
- \$10,000 to the Consumer Credit Counseling of PR to provide one on one confidential sessions, workshops, and public activities on credit and budgeting, financial planning, money management, and housing counseling. Accomplishments: None.
- \$40,000 to Osceola Council on Aging to provide rental and mortgage assistance to promote stable housing for low-income households. Accomplishments: 29 households were assisted.
- \$10,000 to Back on Track Employment Services to provide education that will lead to employment opportunities with a living wage for low and moderate income individuals. Accomplishments: Successfully enrolled 17 participants into the program. All of them completed training and 6 of the participants obtained employment.
- \$10,000 to Lighthouse of Central Florida to provide vision rehabilitation services for teens and adults who are blind or severely vision impaired and their families. Accomplishments: 5 persons received services.

As required by the City's CDBG Citizen Participation Plan, the report was made available for public comment from Monday, December 6 through December 20, 2021. No public comments were received.

This report will be submitted to HUD for final approval. If necessary, staff will make minor corrections without further review by the City Commission unless there are substantive changes to the intent of the report.

Recommendation

Staff recommends approval of the 2020 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter: Frances DeJesus

Attachment(s):

1. CAPER2021_IDIS Version
2. Public Notice_12.2.2021



PY 2020 CAPER

CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

The City of Kissimmee was awarded \$725,168 in funding by HUD for Program Year (PY) 2019. PY 2020 marked the first year of Kissimmee's most recent 5-year Consolidated Plan. Things were far from normal at the start of the year on October 1, 2020. COVID-19 cases in Osceola County were still on the rise and the Center for Disease Control (CDC) provided strict guidance to follow such as limiting the size of gatherings and trying to keep them outside, social distancing, wearing facial coverings, washing hands frequently and using hand sanitizer. The City of Kissimmee and its partners still managed to make significant contributions to provide safe, decent and affordable housing, a suitable living environment, and economic opportunities especially to those in vulnerable situations such as the homeless and those at-risk of becoming homeless.

In its 2020 Annual Action Plan, the City had identified the following goals and priority needs: Economic Development; 2) Affordable Housing; 3) Public Services, and 4) Public Facilities and Infrastructure Improvements. Throughout the year, funds were provided to local partners and spent to address those goals and priority needs accordingly. CDBG funds were allocated as follows:

- \$40,170 to the Community Hope Center to assist at least 50 chronically homeless individuals and families through entry into a coordinated assessment system that provides ranking, referrals, and assistance such as rapid rehousing. Accomplishments: 159 persons were assisted.
- \$40,000 to the Community Hope Center to provide rental and mortgage assistance to promote stable housing to 32 low income households. Accomplishments: 10 were assisted.
- \$70,000 to code enforcement activities intended to assist in the preservation of the existing housing stock and relevant commercial structures. It was anticipated that the activities generated with this funding were going to generate over 700 notices. Accomplishments: 790 cases were handled. Of those 344 were residential.
- \$250,000 to the Public Works and Engineering Department to pay for the design and survey for sidewalk extension project. This project will extend the sidewalk located on the South side of Hill Street (approximately 1100 ft of new sidewalk). Accomplishments: None. A Substantial Amendment was done in PY 2020 to eliminate this project from the 2020 Annual Action Plan and re-allocate the funding to the Hudson Street Improvement project.
- \$10,000 to the Consumer Credit Counseling of PR to provide one on one confidential sessions, workshops, and public activities on credit

and budgeting, financial planning, money management, and housing counseling to 180 participants. Accomplishments: None.

- \$40,000 to Osceola Council on Aging to provide rental and mortgage assistance to promote stable housing to 29 low income households (\$34,800 for direct payment assistance + \$5,200 for program administrative costs). Accomplishments: 29 households were assisted.
- \$10,000 to Back on Track Employment Services to provide education that will lead to employment opportunities with a living wage to at least 20 low and moderate income individuals. Accomplishments: Successfully enrolled 17 participants into the program. All of them completed training and 6 of the participants obtained employment.
- \$10,000 to Lighthouse of Central Florida to provide vision rehabilitation services for 8 to 10 teens and adults who are blind or severely vision impaired and their families. Accomplishments: 5 persons received services.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Affordable Housing	Affordable Housing Homeless	CDBG: \$0 / SHIP: \$0	Homeowner Housing Added	Household Housing Unit	75	0	0.00%	10	0	0.00%
Affordable Housing	Affordable Housing Homeless	CDBG: \$0 / SHIP: \$0	Tenant-based rental assistance / Rapid Rehousing	Households Assisted	0	0	0.00%	35	0	0.00%
Affordable Housing	Affordable Housing Homeless	CDBG: \$80,000 / SHIP: \$0	Homelessness Prevention	Persons Assisted	785	0	0.00%	61	39	64%

Economic Development	Non-Housing Community Development	CDBG: \$0	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	250	0	0.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$0 / SHIP: \$0	Rental units rehabilitated	Household Housing Unit	250	0	0.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$0 / SHIP: \$0	Homeowner Housing Rehabilitated	Household Housing Unit	25	0	0.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$0 / SHIP: \$0	Buildings Demolished	Buildings	20	0	0.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$70,000 / SHIP: \$0	Housing Code Enforcement/Foreclosed Property Care	Household Housing Unit	0	0	0.00%	700	790	112.85%
Program Administration	Program Administration	CDBG: \$145,017	Other	Other	1	0	0.00%	1	1	100%
Public Facilities and Infrastructure Development		CDBG: \$0	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	10	0	0.00%	0	1	0.00%
Public Facilities and Infrastructure Development		CDBG: \$0	Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit	Households Assisted	0	0	0.00%	125	0	0.00%

Public Services	Affordable Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG: \$70,170	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	213	0	0.00%	258	181	70.15%
Public Services	Affordable Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG: \$80,000	Public service activities for Low/Moderate Income Housing Benefit	Households Assisted	124	0	0.00%	0	0	0.00%

Table 1 - Accomplishments – Program Year & Strategic Plan to Date

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

The City of Kissimmee selected not-for profit partners and allocated its PY 2020 funds to successfully provide the following services: employment training, subsistence payments, and services for homeless persons to address the needs of the residents. The delivery of public services to the homeless and those on the verge of homelessness were identified as priorities in the 2020 Annual Action Plan.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

	CDBG
White	178
Black or African American	46
Asian	1
American Indian or American Native	1
Native Hawaiian or Other Pacific Islander	1
Total	227
Hispanic	105
Not Hispanic	122

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

CR-15 - Resources and Investments 91.520(a)**Identify the resources made available**

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	725,086	TBD
Other	public - state	300,000	TBD

Table 3 - Resources Made Available**Narrative**

The City leveraged the CDBG dollars received from the Department of Housing and Urban Development (HUD) with other federal and state dollars to address the housing and community needs of its low and moderate income residents.

As of September 30, 2021, the City had approximately \$2,400,742 in funds remaining from prior years (not including PY 2020). The breakdown was as follows: CDBG – \$735,858, CDBG-CV1 - \$289,642, SHIP - \$230,685, NSP 1 – \$190,794, NSP 3 – \$6,385, and HOME - \$947,378.

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
City of Kissimmee	85	100	See Narrative Below

Table 4 – Identify the geographic distribution and location of investments**Narrative**

The City of Kissimmee elected not to have target areas and spent its CDBG funds citywide since, according to the US Census, the majority of its census tracts (12 of 15 census tracts) have a population whose income is at or below 80% of the area median income.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The City of Kissimmee's programs are designed to assist households to avoid becoming homeless. The funding received from state and federal programs are always used with that purpose in mind. State funds such as the State Housing Initiatives Partnership (SHIP) program is always used to help the City meet its matching HOME requirements.

In addition the City keeps an inventory of publicly owned vacant land and from time to time makes available land for affordable housing development. In last year's CAPER, it was reported that the City was building a new home for sale on a property owned by the City of Kissimmee. That home was built and sold in 2020. Now the City has another vacant property and the intent is to build another home there for either sale or rental purposes. No activity has happened with this property as of yet, but it is expected that in the upcoming year the City will use funds from the Neighborhood Stabilization Program 3 to construct a home.

As a participant in the Osceola County HOME Consortium, the City of Kissimmee is partnering with Osceola County to fund the redevelopment of a site located within the city limits to build a 30 unit multifamily complex that will serve as permanent supportive housing for patients being treated by a local mental health and substance abuse facility. The City of Kissimmee allocated \$200,000 to the project. Outside of the administration funds, the remaining HOME funds have not been allocated at the moment.

Eventhough for the first time in years, Florida lawmakers in 2020 fully funded the Sadowski Affordable Housing Trust Fund, the funds ended up being swept into other uses leaving the the local governments throughout the state without any SHIP funding for the year 2020-2021. However, the City received Coronavirus Relief Fund (CRF) monies from the State of Florida in the amount \$1,116,841 to provide assistance to low and moderate income households who were affected by COVID-19 and had difficulties paying their rent or mortgage.

In addition, the City received additional \$737,760 allocation in CDBG-CV 3 fund to prevent, prepare for, and respond to the spread of COVID-19. The City amended the PY 2020 Annual Action Plan to include these funds. The City intends to allocate this funding to a homeless facility project located on vacant land that will be donated to the City by the Toho Water Authority.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	61	39
Number of Special-Needs households to be provided affordable housing units	0	0
Total	0	0

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	61	39
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	0	0
Number of households supported through Acquisition of Existing Units	0	0
Total	61	39

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The City of Kissimmee did not allocate CDBG funds for the direct production of affordable housing. Instead the funds were allocated to support and maintain affordable housing through code enforcement and eviction and foreclosure prevention. Amid the COVID-19 pandemic, the City allocated funds and assisted households that were at risk with housing assistance for one month of rent or mortgage, and/or utilities, not to exceed \$1,200 or 3 months, in order to prevent eviction or foreclosure.

Of the \$80,000 allocated to provide rental and mortgage assistance to promote stable housing amongst two non-profit agencies, 39 households that had been impacted by COVID-19 received up to 3 months of assistance.

A few of the City's partner nonprofit agencies encountered problems serving potential beneficiaries who otherwise would be willing to participate in the programs. Many of the residents were still apprehensive about leaving their home to meet with the agencies.

Discuss how these outcomes will impact future annual action plans.

As always, the City will shift spending priorities to programs that are ready to be implemented and spend funds, including those programs that already have a waiting list. This is one of the criteria used when evaluating projects.

With new variants being discovered in the United States and as they make their way to Osceola County it is difficult to predict how soon the community is going to recover from the COVID-19 pandemic in order to reach some type of normalcy. However proactive nonprofit organizations that implement the necessary precautions and are willing to think outside of the box in order to reach their potential beneficiaries will receive priority over those that do not.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	185	0
Low-income	42	0
Moderate-income	0	0
Total	227	0

Table 7 – Number of Households Served

Narrative Information

Over 80 percent of the CDBG public services recipients were extremely low income. This is representative of the need that exists in the City of Kissimmee.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

One of the CDBG recipients during PY 2020 assisted chronically homeless individuals and families through entry into a coordinated assessment system that provides ranking, referrals, and assistance such as rapid re-housing. Their goal was to assist at least 50 homeless individuals or families and they ended up assisting 159 persons.

In PY 2020, the City used prior year's money to provide full scholarships for 50 homeless children to attend the City's summer recreation program. Due to the COVID-19 pandemic the summer camp program did not take place the summer of 2019 (PY 2019). Thirty-three (33) children participated in the 2020 summer program.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City of Kissimmee does not offer any programs designed solely to address the needs of persons in emergency shelters or transitional housing. However, the Community Hope Center works directly with the homeless population by placing them in motels along the 192 corridor. In some instances, these individuals may be transferred to other counties and even out of state, if they wish to relocate.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

The Community Hope Center and the Osceola Council on Aging, two of the City's CDBG sub-recipients, helped address the City's housing problem by assisting low and moderate income households that were impacted by COVID-19 with mortgage and rental assistance to prevent homelessness. These clients also received other services from Osceola Council on Aging's assistance programs such as Low Income Home Energy Assistance Program (LIHEAP), utility payments and access to the food pantry. Through the City's partnership with these two sub-recipients, the City of Kissimmee provided housing assistance to 39 households low and moderate income households for one month of rent or mortgage, and/or utilities, not to exceed \$1,200 or 3 months, in order to prevent eviction or foreclosure through limited subsistence payments. Many of these households were already cost-burdened by paying more than

30% of their income to cover their housing expenses. With many of them struggling even before COVID-19, the City's assistance prevented them from becoming homeless.

In 2020, the City of Kissimmee approved the request of a local nonprofit organization that specializes in providing an array of therapeutic, psychiatric, and substance use disorder services designed to meet the needs of individuals and their families. The request was to receive \$200,000 in HOME funds for the construction of a 30 unit multifamily complex. The City's contribution would go towards the construction budget which would be mainly financed by a \$4.9 million SAIL loan from the Florida Housing Finance Corporation. This project is consistent with the City's goal to support the development of a facility that would benefit the community's chronic homeless issue.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The Community Hope Center, which is one of the City's sub-recipients, has a dedicated staff that helps to identify homeless individuals and those precariously housed individuals and families in the City.

In 2020, the Commission directed to develop a Request for Proposal (RFP) to seek a respondent that would assist with the City's goal of moving clients from homelessness to permanent housing quickly through temporary, hotel/motel based or other suitable emergency non-congregate shelter and support services to individuals experiencing homelessness.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

There are no public housing units within the City's boundaries.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

There are no public housing units within the City's boundaries.

Actions taken to provide assistance to troubled PHAs

There are no public housing units within the City's boundaries.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

The City of Kissimmee maintains an Affordable Housing Advisory Committee that reviews policies, procedures, and ordinances for their impact on the development of housing, particularly affordable housing. During PY 2020 there were no instances where new policies or other City actions negatively impacted development of housing of affordable housing.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The City of Kissimmee allocated 15% of its annual allocation for funding to public service agencies providing assistance to low and moderate income persons. The funding offered a variety a services such as employment training to unemployed or underemployed individuals, subsistence payments, and services for homeless persons to address the needs of the residents.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

The City of Kissimmee has incorporated the procedures for lead hazard reduction or lead based paint abatement guidelines as defined in 24 CFR Part 35 in its Housing Rehabilitation Program Policy and Procedures.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The City of Kissimmee allocated funding to two CDBG sub-recipients to provide employment training to unemployed or underemployed individuals. As a result, 22 participating in training and at least 6 obtained employment.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The City of Kissimmee continues to build and strengthen relationships within the community and with social service providers. The following are examples from this program year:

- Regularly participating in meetings regarding the HUD Continuum of Care and all other homeless issues in the region (Seminole, Orange and Osceola counties);
- Continue to build upon existing relationships with local service providers for networking, referral, and collaborations;
- Assessment of programs and strategies provided by neighboring government and non-profit agencies to determine where possible leveraging opportunities may exist.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The City continued to strengthen its relationship with several private rental providers and many non-profit agencies serving the low and moderate income households within our community.

The City of Kissimmee is a member of the Osceola Social Services Network. The Network's goal is to foster new partnerships and strengthen existing ones while providing opportunities for agency leadership to assess community needs, strategically plan, and implement change in the community. The discussion includes an update on what is going on with health and social services in Osceola County.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

The City completed its updated Analysis of Impediments to Fair Housing Choice in 2020.

The most critical and obvious impediment to fair housing is the gap between household income and housing costs. The City continues to work to create alternative strategies and support programs and activities that will help close the gap between the income earned and cost of living.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

The performance of each CDBG subrecipient is reviewed by the City of Kissimmee to ensure production and accountability, to ensure compliance with the federal requirements and to evaluate the organization's performance in delivering the programs with the CDBG funds. Due to COVID-19, staff has not conducted any in-person monitoring activities during PY 2020. However, staff maintained a "hands-on" approach throughout the year and closely oversaw the activities of its subrecipients.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

The City of Kissimmee encourages citizens, public agencies, and other interested parties to review the contents of its draft CAPER and to submit written comments. A draft of the document was available at the City of Kissimmee Development Services Department office located at 101 Church Street, Kissimmee, FL 34741. Comments on the report were accepted in writing or via e-mail during a 15 day comment period from Monday, December 6 through Monday, December 20, 2021. No comments were received.

The City Commission held a Public hearing in the City Commission Chambers located at City Hall, 101 Church Street, Kissimmee, FL 34741 on Tuesday, December 21, 2021 at 6:00 PM to obtain input and comments. Persons with disabilities requiring special accommodations to participate were asked to call the Development Services Department office to make special arrangements prior to the meeting.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The City of Kissimmee did not meet the timeliness test by the deadline of August 15, 2021, as required

by HUD due to a few projects that have been delayed due to primarily the COVID-19 pandemic and the need to re-allocate funds through the substantial amendment process. However, steps have been put in place in order to meet timeliness in 2022.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The City of Kissimmee did not meet the timeliness test by the deadline of August 15, 2021, as required by HUD due to a few projects that have been delayed due to primarily the COVID-19 pandemic and the need to re-allocate funds through the substantial amendment process. However, steps have been put in place in order to meet timeliness in 2022.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

VIEWPOINT

Letters To The Editor • Opinions • Columnists

OSCEOLA
NEWS-GAZETTE
aroundosceola.com

Year -130– No. 48

Owner/Publisher
ROCHELLE STIDHAM
Owner/General Manager
JUDER STIDHAM III
Associate Publisher
TONI ROWAN
Editor
KEN JACKSON
Production Manager
ANGELIQUE PRIORE
Business Manager
PAMELA BIKOWICZ
Legal Advertising
GARY LUGO
(USPS Number 513540)
(ISSN 1060-1244)
Published each Thursday for
\$52 per year by
Stidham Media Group
Holdings, LLC. All rights
reserved. Periodicals postage
paid at Kissimmee, FL

Postmaster: Send address
changes to:
Osceola News-Gazette
22 W. Monument Ave., Suite 5,
Kissimmee, FL 34741

The Osceola News-Gazette is
published by Stidham Media
Group Holdings, LLC. Phone 407-
846-7600. Email at publisher@
osceolanewsgazette.com.

The Osceola News-Gazette is
available online at:
www.aroundosceola.com.

Stidham Media Group Holdings, LLC cannot be held responsible for advertising claims. We reserve the right to refuse or discontinue any advertising, and to edit editorial content. All materials in these publications are copyrighted. Publisher will not be liable for any errors in advertising to a greater extent than the cost of the space occupied by the error, and accepts responsibility only for an error in the first week's issue.

CIRCULATION
VERIFICATION
COUNCIL

LETTERS TO THE EDITOR

Fighting for Four Winds marshland

Dear Editor:

The people of the Four Winds Estates and Windward Cay were betrayed by the County Commissioners, including Peggy Choudhry. Nov. 15 was the meeting to approve or deny the rezoning of the swampland, rich with wildlife, that has stood by our neighborhoods for decades. While many of us stood to fight the rezoning, only Jay Wheeler stood for it. He betrayed everyone, including myself. But it seemed the commissioners had already made their decision by the time of voting. What was the point of having us make our comments when they weren't listening to us? You don't say "I hear you" and do the opposite of what we're asking. I am so angry and disappointed in every commissioner, and would like them to know that no matter what, I'm going to fight every development they allow to set foot in our wetlands.

The boxing gloves are on. Ring that bell.

Megan Miller
Kissimmee

Don't divide, just be Americans

Dear Editor:

Lately we read a lot of stories about people who are really proud of their foreign heritage. They consider themselves Russian-American, Spanish-American, Afro-American, and so on. I don't think a person should forget where they come from, it's who they are. I do think we'd be better off if we considered ourselves just plain Americans. It seems we can't be plain Americans until our blood has been diluted by other blood lines through marriage. For instance, I'm Scottish, Irish, Welsh, English, Dutch and American Indian, so I am truly American. I'm proud of each blood

line, but I'm an American. My ancestors came to America for a new and better life, not an extension of the old one. They made sacrifices to do so. They left family and friends, most of whom they never saw again. They were proud to be Americans. They learned the language and customs here. Those who fought the War of Independence and every war since did so as Americans. In our Pledge of Allegiance, "indivisible" means, united we stand, divided we fall. So when we refer to ourselves as Afro-Americans or Spanish-Americans, we are dividing our country and loyalty between two countries – and we cannot serve two countries, just like we cannot serve two Gods. Calling each other slang names has no place in our society. If we make our home in the U.S., we are just plain Americans. Perhaps if we think of each other that way we won't notice color or race, because a person is just plain American.

Jan DeMond
Kissimmee

Spending bill to tax retirees

Dear Editor:

HR 5376 is the \$2 trillion social spending bill that the U.S. House of Representatives just passed. It purposes to deliver social, energy, climate and economic reforms to the American People. Sounds fine on the surface, but how will the Federal Government fund this bill? Positioned well below your willingness and stamina to read its 2,466 pages of text are tax reforms that I think adversely affect retirees. HR 5376 includes changes to the 1986 Tax Code allowing tax increases to your retirement accounts. Democrats sold this bill as a "tax the rich" act, but it is actually a "redistribution of wealth" act. According to the Federal Reserve, the majority of personal wealth in America is held in IRA accounts, bank accounts, trust accounts and property. Households headed

by people over 55 hold 73 percent of the value of domestically owned stock, and the same share of America's total wealth. Currently American households hold approximately \$136 trillion of wealth. A recent study by the Wharton School of Business found the bill would increase spending by \$2.1 trillion over its 10-year budget window while increasing revenue by only \$1.8 trillion, for a 10-year deficit of \$274 billion. So there is already a shortfall, meaning more revenue will need to be raised. According to a study by KPMG, rules modifications to retirement plans include contribution limits for IRAs, increases in minimum required IRA distributions, graduated tax increases for Roth rollovers, surcharges on high income individuals (which the government defines and can change), estates and trusts. Maybe it doesn't affect you based on the definition of a high-income earner or your level of wealth today, but what about the future? You, the retiree, will eventually fund this bill through increased taxes on your retirement accounts. When the government obtains that much control over your retirement savings and the ability to redefine levels of wealth, you are in for a world of hurt. Congressman Darren Soto already threw you under the bus by voting in favor of this bill as Speaker Pelosi instructed. So I now urge all retirees to contact senators Joe Manchin and Kyrsten Sinema via their website or by phone and let them know, as a retiree, you do not support HR 5376 and should vote against it. A call to Soto's office letting him know what the underside of a bus looks like wouldn't hurt either.

Sergio E. Ortiz
Kissimmee

Mr. Ortiz is a candidate for U.S. Congress District 9

Want to write a letter to the editor?

Email it to Editor Ken Jackson at editor@osceolanewsgazette.com.

City of Kissimmee Public Hearing to Vote on Affordable Housing Incentive Strategies Recommendations

In its effort to encourage production of affordable housing, the City of Kissimmee Affordable Housing Advisory Committee (AHAC) has reviewed the eleven required strategies set out in Florida Statutes, Sec. 420.9076 (4)(a)-(k) and two additional strategies not listed in the statute. Based on this review and evaluation, the AHAC has formulated the following recommendations to the City of Kissimmee City Commission to incorporate into its housing strategy:

- **Modification of Impact Fees** – The City of Kissimmee should develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.
- **Flexible Densities** – In order for developments to be eligible for a density bonus of 5%, the City of Kissimmee should require that developments seeking to provide affordable housing to obtain density bonuses must set aside at least 20% of its units as affordable housing. These units must remain affordable for up to 15 years.
- **Affordable Accessory Residential Units** - City of Kissimmee should not include attached Accessory Dwelling Units (ADU) in the density calculations for any of the zoning districts; however, the attached ADU should be included in the calculation for infrastructure for the purpose of calculating mobility fees, impact fees and connection fees. In addition, the City should remove the requirement that the principal structure be owner occupied.
- **Process of Ongoing Review** – The City of Kissimmee should adopt a more formal process of ongoing review to consider, before adoption, policies, procedures, ordinances, regulations, or plan provisions that increase the cost of housing. AHAC recommended that staff from the initiating department/division should meet with the Housing staff to discuss the impact of the policy on the cost of affordable housing. During the review of the proposed policy or regulation, the housing staff should perform research on the impacts of that policy or regulation on housing cost and provide the results in the form of an impact analysis (Housing Impact Statement) to the AHAC at an upcoming meeting.
- **Public Land Inventory** - Housing staff should prepare the inventory list of surplus land including only those parcels that are appropriate for affordable housing and to draft guidelines for a Surplus Land for Affordable Housing Program. The program should include guidelines on parcel identification, oversight, disposition procedures, affordability requirements, etc.
- **Support of Development Near Transportation Hubs** - The City should encourage housing developments that meet the definition of either affordable housing or workforce housing and are located near transportation, employment centers, and/or mixed used development through available funding sources and/or regulatory incentives.
- **Community Land Trust** - The City of Kissimmee should evaluate the Community Land Trust model as a potential program for affordable housing in the City of Kissimmee.
- **Definition of Affordable Housing Development** – The City of Kissimmee should define affordable housing developments as those in which at least 20% of the units are set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes.

The AHAC will be holding a Public Hearing to vote on these recommendations, review the implementation of previously recommended strategies, and solicit public comment on the AHAC Report as it is being considered for adoption. The Public Hearing will be held on Wednesday, December 8, 2021 at 6:30 PM at the Orange Gardens Community Center located at 1114 George Street, Kissimmee, FL 34741. Copies of the 2021 AHAC Report will be available for review and for public comment from Friday, December 3, 2021 through Wednesday, December 8, 2021. To obtain a copy and/or provide comments, contact Frances De Jesus, Housing and Community Development Program Manager at (407) 518-2156 or by e-mail at frances.dejesus@kissimmee.gov.

Persons with disabilities requiring special accommodations to participate should call the Development Services Department office at (407) 518-2156 within forty-eight (48) weekday hours of the meeting. Where a significant number of non-English speaking residents can be reasonably expected to participate, an interpreter will be provided upon written request to the Development Services Department office (101 Church Street, Kissimmee, FL, 34741) no later than 5 PM, Tuesday, December 7, 2021.

CHANGE OF DATE FOR THE 15-DAY COMMENT PERIOD AND PUBLIC HEARING FOR THE CITY OF KISSIMMEE 2020 CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT (CAPER)

The City of Kissimmee is working on its Consolidated Annual Performance Evaluation Report (CAPER) for fiscal year ending September 30, 2021. The purpose of the CAPER is to provide information to both the general public and the federal government regarding activities undertaken with Community Development Block Grant (CDBG) program funding received from the U.S. Department of Housing and Urban Development (HUD). The CAPER serves as a tool to evaluate progress addressing program objectives and priorities identified in 2020-2025 Five Year Consolidated Plan.

The City of Kissimmee encourages citizens, public agencies, and other interested parties to review the contents of its draft CAPER and to submit written comments. A draft of the document will be available at the City of Kissimmee Development Services Department office located at 101 Church Street, Kissimmee, FL 34741. Comments on the report will be accepted during a 15-day comment period from Monday, December 6 through Monday, December 20, 2021 (new dates). Please submit written comments prior to 5:00 PM on Monday, December 20, 2021 (new date) to: Citizen Comment, c/o Development Services Department, Housing and Community Development Division, 101 Church Street, Kissimmee, FL 34741 or by email to frances.dejesus@kissimmee.gov.

The Kissimmee City Commission will hold a Public Hearing in the City Commission Chambers located at City Hall, 101 Church Street, Kissimmee, FL 34741 on Tuesday, December 21, 2021 (new date) at 6:00 p.m., or as soon thereafter as can be heard, to obtain input and comments. Persons with disabilities requiring special accommodations to participate should call the Development Services Department office at (407) 518-2156 within forty-eight (48) weekday hours of the meeting.

Publication Date: Thursday, December 2, 2021

CAMBIO DE FECHA PARA EL PERIODO DE COMENTARIOS DE 15 DÍAS Y AUDIENCIA PÚBLICA PARA LA CIUDAD DE KISSIMMEE INFORME ANUAL DE EVALUACIÓN DEL DESEMPEÑO CONSOLIDADO 2020 (CAPER, por sus siglas en ingles)

La Ciudad de Kissimmee está trabajando en su Informe de Evaluación de Desempeño Anual Consolidado (CAPER) para el año fiscal que termina el 30 de septiembre de 2021. El propósito del CAPER es brindar información tanto al público en general como al gobierno federal sobre las actividades realizadas con Community Development Block Financiamiento del programa de subvenciones (CDBG) recibido del Departamento de Vivienda y Desarrollo Urbano de EE. UU. (HUD). El CAPER sirve como una herramienta para evaluar el progreso en el abordaje de los objetivos y prioridades del programa identificados en el Plan Consolidado de Cinco Años 2020-2025.

La Ciudad de Kissimmee alienta a los ciudadanos, agencias públicas y otras partes interesadas a revisar el contenido de su borrador de CAPER y enviar comentarios por escrito. Un borrador del documento estará disponible en la oficina del Departamento de Servicios de Desarrollo de la Ciudad de Kissimmee ubicada en 101 Church Street, Kissimmee, FL 34741. Los comentarios sobre el informe serán aceptados durante un período de comentarios de 15 días desde el lunes 6 de diciembre hasta el lunes, 20 de diciembre de 2021 (nuevas fechas). Envíe sus comentarios por escrito antes de las 5:00 p.m. del lunes 20 de diciembre de 2021 (nueva fecha) a: Citizen Comment, c / o Development Services Department, Housing and Community Development Division, 101 Church Street, Kissimmee, FL 34741 o por correo electrónico a frances.dejesus@kissimmee.gov.

La Comisión de la Ciudad de Kissimmee llevará a cabo una Audiencia Pública en las Cámaras de la Comisión de la Ciudad ubicadas en el Ayuntamiento, 101 Church Street, Kissimmee, FL 34741 el martes 21 de diciembre de 2021 (nueva fecha) a las 6:00 p. M., o tan pronto como sea posible. escuchado, para obtener aportes y comentarios. Las personas con discapacidades que requieran adaptaciones especiales para participar deben llamar a la oficina del Departamento de Servicios de Desarrollo al (407) 518-2156 dentro de las cuarenta y ocho (48) horas laborales posteriores a la reunión.

Fecha de publicación: jueves 2 de diciembre de 2021

120221.ONG

ITEM 7.A**AUTHORIZATION TO TRANSFER AMERICAN RESCUE PLAN - CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS****Request**

Authorization to transfer funds from the American Rescue Plan - Coronavirus Local Fiscal Recovery Funds.

Explanation

During the June 21, 2021, Commission Workshop, the Commission approved moving forward with allocating the American Rescue Plan - Coronavirus State and Local Fiscal Recovery Funds for projects that meet the following federally-authorized uses. In response, staff is requesting authorization to transfer funds from the American Rescue Plan Fund to the appropriate funds and accounts as listed below, amending the budget accordingly.

1) Address negative economic impacts caused by the public health emergency

Use of these funds are to aid in addressing negative impacts and economic harms to workers, households, small businesses, impacted industries, and the public sector.

Small Business Assistance Program "Operation Business Boost" - \$350,000

2) Replace lost public sector revenue

Use of these funds are to provide support for government services to the extent of the reduction in revenue experienced due to the pandemic.

General Fund - \$1,689,000.00

Sales Tax Fund - \$2,304,000.00

Gas Tax Fund - \$571,000.00

Building Fund - \$750,000.00

3) Invest in water, sewer, and broadband infrastructure

Use of these funds will assist with necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Chamber Park Fiber project to provide access to broadband internet in the community center hub - \$80,000

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00110603 - 503434		Increase	350,000	
00100381 - 381000		Increase	350,000	
00100369 - 369900		Increase	1,689,000	
00190700 - 509276		Increase	1,689,000	
10400369 - 369900		Increase	2,304,000	
10490700 - 509276		Increase	2,304,000	
10300369 - 369900		Increase	571,000	

10345650 - 509276		Increase	571,000	
10100369 - 369900		Increase	750,000	
10140106 - 506292		Increase	750,000	
56000369 - 369900		Increase	80,000	
56060106 - 506393		Increase	80,000	

Financial Summary:

Increase revenue to transfer funds from the American Rescue Act Fund to the General, Sales Tax, Gas Tax, and Building Funds, amending the budget accordingly.

Recommendation

Authorization to transfer and expend funds from the American Rescue Plan - Coronavirus Local Fiscal Recovery Funds as requested.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter:

Attachment(s):

None

ITEM 7.B

DONATION OF VEHICLE TO THE KISSIMMEE MAIN STREET PROGRAM

Request

The Police Department is requesting City Commission approval to donate a John Deere Gator to the Kissimmee Main Street Program.

Explanation

The Kissimmee Main Street Program is currently in need of a golf cart-type vehicle. The Kissimmee Police Department has the below described City asset designated to be removed from service. We no longer utilize the John Deere in our fleet as we have another golf cart in use. The Department is requesting authorization to donate the identified vehicle to the Kissimmee Main Street Program.

The vehicle to be donated is described as follows:

- PD 477
- 1999 John Deere Gator
- Serial# W006X4X034520
- City Asset # 22487
- Estimated Current Value \$1,500.00

Recommendation

Staff recommends approval to donate PD 477 to the Kissimmee Main Street Program.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter:

Attachment(s):

None

ITEM 7.C

LICENSE AGREEMENT BETWEEN GREEN MEADOWS FARM LTD AND THE CITY OF KISSIMMEE TO OPERATE AT LANCASTER RANCH PARK

Request

Approval of a License Agreement with Green Meadows Farm to operate an educational farm and ranch attraction at Lancaster Ranch Park.

Explanation

Green Meadows Petting Farm opened in Kissimmee, Florida in 1988 and, for 30 years, provided an educational farm and ranch experience for school children and church groups, as well as special community events such as an Easter Egg Hunt, Fall Corn Festival, Halloween and Christmas Lights Adventure. In 2018, they were forced to close due to the expiration of their land lease and had no other property to move the operations to in the local area.

At the March 27, 2018 Commission Workshop, the concept of Green Meadows Petting Farm becoming a tenant at the developing Lancaster Ranch Park was approved. Staff has worked closely with Green Meadows Farm and the AECOM park design team to incorporate the petting farm into the future park program and design. The City feels it is in the best interest of the community to enter into a public private partnership with Green Meadows Farm as outlined in the License Agreement.

Within the agreement, the term shall be for four (4) years commencing January 1, 2022 and ending September 20, 2026, with an option to enter into future agreements. Green Meadows Farm will be responsible for maintenance of the approximately 7 acre parcel within the City park and capital improvements made to support their operations, including animal housing, as well as proper care of any livestock and any hazardous materials or waste. Green Meadows will also provide and maintain proper insurance naming the City of Kissimmee as Additional Insured for the duration of the agreement. The City will maintain the building (existing house) on site. Green Meadows Farm will pay a rental fee monthly as listed in the agreement with the City of Kissimmee.

Recommendation

Staff recommends Commission approval of the License Agreement with Green Meadows Farm to operate at the Lancaster Ranch Park.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. Green Meadows. License Agreement. Dec. 2021 edits (1)
2. Exhibit A - Map
3. Exhibit B with livestock

LICENSE AGREEMENT FOR USE OF LACKEY PROPERTY

THIS LICENSE AGREEMENT is made this _____ day of _____, 2021, by and between the **CITY OF KISSIMMEE**, a municipal corporation (hereinafter referred to as City) and **GREEN MEADOWS FARM LTD.**, a Florida Limited Partnership (hereinafter referred to as Green Meadows) and each represents as follows:

“WITNESSTH”

WHEREAS, the City owns several parcels of land commonly referred to as the Lancaster Ranch Park Site; and

WHEREAS, Green Meadows opened in Kissimmee, Florida in 1988 and provided an educational farm and ranch experience for school children, families, and church groups, as well as special community events such as an Easter Egg Hunt, Fall Corn Festival, Halloween, and Christmas Lights Adventures; and

WHEREAS, in 2018 Green Meadows was forced to close due to the expiration of their land lease; and

WHEREAS, at the Lancaster Ranch Park Master Plan Update Commission Workshop on March 27, 2018, the City Commission approved the concept of Green Meadows Farm becoming a tenant of the park, and relocating to the Lackey Parcel in Lancaster Ranch, and the City Manager indicated he would bring an Agreement with Green Meadows back to the Commission for approval on a future agenda; and

WHEREAS, Green Meadows submitted to the City a draft Proposal to utilize a portion of the Lancaster Ranch Park Site known as the Lackey Parcel for a petting farm incorporated herein as Exhibit “A”; and

WHEREAS, the City accepted a Florida Communities Trust Grant as administered by the Florida Department of Environmental Protection, for the Lancaster Ranch Park Project, including Green Meadows Petting Farm operations, requiring future revenue derived from the rent to go towards annual maintenance and operations of the park; and

WHEREAS, the City has determined that it is in the best interest of the community to enter into a public private partnership with Green Meadows to operate on the Lackey Parcel.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions, each promise to the other as follows:

1. **USE OF THE LICENSED PREMISES.** Pursuant to the terms and conditions set forth herein, the City hereby grants to Green Meadows, a non-exclusive license to use the property depicted on Exhibit “A” (hereafter referred to as Licensed Premises).

2. **TERM.** This License Agreement shall be for a term of four (4) years commencing January 1, 2022 and ending September 30, 2026.
3. **LIMITATION OF RIGHTS.** This License Agreement conveys to Green Meadows a non-exclusive possession of the Licensed Premises, subject to conditions in any recorded and unrecorded restriction, conditions, limitations, and easements affecting the Licensed Premises.
4. **CITY'S RESERVATION OF RIGHTS.** Subject to the rights created herein, the City expressly reserves (it itself, its successors, and assigns) the right to use, or grant to others the right to use by virtue of additional licenses or easements, any and all portions of the area upon, above, or under the Licensed Premises (in City's sole discretion) for any purpose whatsoever not inconsistent with the rights herein granted. The City also reserves the right to enter upon the Licensed Premises at any reasonable time to inspect the operation, sanitation, safety, maintenance, and use thereof, and to perform any repair or maintenance of the Licensed Premises, and to enter upon the Licensed Premises at any time to remedy any condition thereof in the event of an emergency. However, the City shall not interfere with or prevent the normal use and maintenance of the Licensed Premises by Green Meadows.
5. **COVENANTS OF GREEN MEADOWS.** Green Meadows, for itself, its successors, assigns, grantees, and invitees, covenants and agrees it shall:
 - A. Remain responsible for the maintenance of the property and improvements located thereon so long as Green Meadows is in possession of the Licensed Premises. Specifically, the preparation of the Licensed Premises for guests and continued maintenance of the Licensed Premises will require:
 - 1) Removing scrap equipment, and remodeling two barn structures with City approval for any changes;
 - 2) Removing of invasive weeds, planting of trees, pruning of all trees up to eight feet and maintaining the landscape of the Licensed Premises.
 - 3) Building pens and fencing the necessary areas on the Licensed Premises to ensure all animals are secure.
 - 4) Providing and maintain a minimum of two portable restrooms for public; one must be ADA accessible. Providing a minimum of one hand wash station for public use.
 - 5) Operation of an interactive animal experience with the type and number of animals listed in Exhibit "B" including, but not limited to: pony rides, milking a cow, hayrides, feeding animals, and selecting pumpkins in the fall.

- 6) Providing a designated livestock manager, who shall be an employee of Green Meadows, who shall reside on the Licensed Premises. Restrict general public access from the building designated as the residence for the livestock manager.
 - 7) Provide bottled water for sale to the general public, in lieu of a water fountain.
 - 8) Securing and paying for utilities required for the Licensed Premises.
- B. Comply at all times and in all respects with all present and future local, municipal, county, state, and federal applicable laws, statutes, governmental constitutions, ordinances, codes, rules, regulations, resolution, requirements, standards, applications, and directives, as well as all decisions, judgments, writs, injunctions, orders, decrees, or demands of courts, administrative bodies, and other authorities construing any of the foregoing, and Green Meadows shall obtain, maintain, and comply with all applicable Laws. Green Meadows shall not, by any act or omission, render the City liable for any violations thereof.
- C. Not cause or give permission for any hazardous waste, toxic substances or related materials as defined by any law to be used, placed, or misused or disposed of upon, above, or under, or transported to or from the Licensed Premises. City shall not be liable to Green Meadows for any Hazardous Materials Activities cause by Green Meadows, its employees, agents, contractors, licensees, invitees, successors, or assigns. Green Meadows shall be liable to City for any Hazardous Materials Activities or any hazardous spills, fire, or other environmental hazard on the Licensed Premises cause by Green Meadows, its employees, agents, or contractors, or in any way resulting from Green Meadow's use of the Licensed Premises. Green Meadows shall indemnify, defend with counsel acceptable to the City, and hold the City its successors, assigns, and the officers directors, representatives, agents, and employees of each, free, clear, and harmless from and against any claims, damages, costs, and liabilities arising out of any Hazardous Materials Activities, spills, or fire cause by Green Meadows, its employees, agents, contractors, licensees, or invitees, on, under, through, or across the Licensed Premises.
- D. Not permit any lien to be filed against the Licensed Premises for any labor or materials in connection with work of any character performed or claimed to have been performed on the Licensed Premises, at the direction or sufferance of Green Meadows or its assigns. If any such lien is filed against the Licensed Premises, the City shall have the right (but not the obligation) to cause such lien to be released. Green Meadows shall pay on demand all of the City's costs in connect therewith together with interest thereon at the interest rate set forth herein accruing from and after the date of such demand until the City's receipt of full payment therefore.
6. **COVENANTS OF CITY.** The City, for itself, its successors, assigns, grantees, and invitees, covenants and agrees it shall:
- A. Renovate the livestock manager's residence to ensure compliance with applicable Federal, State and City codes.

B. Build roadway access from Pleasant Hill Road to the Licensed Premises and parking lots to accommodate the public.

7. **COMPENSATION.** The following compensation plan shall be implemented for the use of City property for the petting farm. This compensation plan is contingent on Green Meadows being able to access the Licensed Premises on January 1, 2022. If Green Meadows accesses the Licensed Premises after January 1, 2022, payments for land and structure preparation shall commence on the date of access. If Green Meadows is not able to open to the public on October 1, 2022, the monthly payments will continue to be \$300.00 until such time that the petting farm is open to the public.

Dates	Activity	Monthly Payment
01/01/2022 to 09/30/2022	Preparation of premises	\$300.00
10/01/2022 to 09/30/2023	Open to the public Year One	\$3,000.00
10/01/2023 to 09/30/2024	Second year	\$4,000.00, plus 2% of gate revenue over \$300,000.00
10/01/2024 to 09/30/2025	Third year	\$4,500.00, plus 2% of gate revenue over \$150,000.00
10/01/2025 to 09/30/2026	Fourth year	\$5,000.00 plus 2% of gate revenue over \$75,000.00
10/01/2026 and beyond	Contract extension upon mutual written consent Fifth year and future years	\$5,000.00 plus 2% of all gate revenue.

8. **INDEMNIFICATION.**

A. Green Meadows agrees to indemnify and hold the City, its members, officers, employees, and agents of each, harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from Green Meadows' use, occupancy, operation, or maintenance of the Licensed Premises, including the work, acts, or omissions of Green Meadows' officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the City's negligence. The City will refer to Green Meadows promptly upon notice thereof, any claim made, or suit instituted against the City which, in any way, affects Green Meadows or its insurer, and Green Meadows or its insurer shall have the right to compromise and defend the same to the extent of its interest. Green Meadows shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Green Meadows to the City under this Agreement. Any final judgment rendered against the City for any cause for which Green Meadows is liable hereunder shall be conclusive against Green Meadows as to a liability and amount.

In addition to and without limiting the generality of any other provisions of this License Agreement, Green Meadows shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended) by Green Meadows employees, agents, delegates, invitees, licensees, concessionaires, contractors or representatives, of any Hazardous Materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Licensed Premises. The provisions of this Section shall survive any acquisition of the premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities.

9. **INSURANCE.** Green Meadows agrees to obtain and keep insurance coverage of \$1,000,000 for each occurrence and \$5,000,000 general aggregate, as well as the required Auto and Products liability insurance. The City of Kissimmee will be listed as an additional insured for which Green Meadows will annually furnish a certificate to the City. In addition, Green Meadows will comply with all applicable workmen's compensation requirements.
10. **WAIVER OF SUBROGATION.** Green Meadows 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.
11. **BREACH BY GREEN MEADOWS.** If Green Meadows breaches any provision in this License Agreement and fails to cure any such breach within thirty (30) days after written notice from the City, in addition to any other right or remedy available to the City at law or in equity, City shall have the right, but not the obligation, to cure any such breach. Furthermore, the City may proceed judicially to evict Green Meadows from the Licensed Premises subsequent to Green Meadows' failure to cure any such breach within thirty (30) days after written notice from the City.
12. **ASSIGNMENT.** This License Agreement involves the granting of a personal right by the City to Green Meadows and therefore, neither this License Agreement nor any interest herein may be assigned, transferred, or conveyed by Green Meadows without the prior written consent of the City, which consent may be withheld or approved in the City's sole discretion.

13. **NO WARRANTY.** The City makes no representations, statements, warranties, or agreements to Green Meadows in connection with this License Agreement or the License Licensed Premises, other than as set forth within this License Agreement.
14. **ENTIRE AGREEMENT/AMENDMENT.** This License Agreement embodies the entire understanding of the Parties and supersedes all prior discussions and agreements between the Parties. There are no further or other agreements or understanding, written or oral, in effect between the parties relating to the subject matter of this License Agreement. This License Agreement shall not be modified or amended in any respect except by a written agreement executed by both Parties.
15. **NOTICES.** All notices and other communications given pursuant to this License Agreement to be served, given, or delivered upon either party, shall be in writing and shall be sent by registered mail, return receipt requested, or by a national overnight receipt delivery service (e.g., Federal Express). Such notices shall be deemed served, given, and delivered on the earlier of the following: (1) the date of actual receipt; (2) the fifth (5th) business day after any registered or certified notice was deposited in a sealed envelope in the U.S. mail, postage prepaid; (3) the next business day after any notice was delivered (on a business day) to a receipted overnight delivery service of said notice accepted same. All notices shall be addressed as set forth below, or to such other address as the City or Green Meadows shall hereafter give notice to the other in writing:

City of Kissimmee Steve Lackey City of Kissimmee Director of Parks and Recreation 101 Church Street Kissimmee, FL 34741	Green Meadows Farm, Ltd. Daniel Keyes PO Box 20245 Floral Park, NY 11002 516-448-4730
--	---

16. **GOVERNING LAW/VENUE/ATTORNEY'S FEES AND COSTS/WAIVER OF JURY TRIAL.** This License Agreement shall be governed by laws of the State of Florida. Any legal proceeding brought by either party to enforce any right under this Contract shall be brought in the Ninth Judicial Circuit in and for Osceola County. The parties expressly waive the right to attorney's fees and costs and waive all rights to trial by jury.
17. **SOVEREIGN IMMUNITY.** 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 an 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.

18. **OPTION.** The Parties have the Option to enter into a future Agreement for the use of the Licensed Premises. Compensation for the Option shall be a mutually agreed upon percentage of Green Meadows gross profits from the use of the Licensed Premises.
19. **NO IMPLIED WAIVER.** No course of dealing between the parties and no delay in exercising any right, power or remedy conferred hereby or now hereafter existing at Law, in equity, by statute or otherwise shall operate as a waiver of, or otherwise prejudice, any such right, power or remedy.
20. **NO PUBLIC RIGHTS CREATED.** Nothing herein shall create or be construed to create any rights in and/or for the benefit of the general public in or to the Licensed Premises, except as may be expressly permitted by Grantee.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first written above written.

CITY OF KISSIMMEE

ATTEST:

Olga Gonzalez, Mayor- Commissioner

Linda Hansell, City Clerk

Approved as to form and legal sufficiency:

City Attorney

GREEN MEADOWS FARM LTD.,

Daniel Keyes

Title

STATE OF NEW YORK)
COUNTY OF)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of ____ December 2021, by Danial Keyes, as (*type of authority, e.g. officer, trustee, attorney in fact*) for Green Meadows Farm Ltd. , who is personally known or produced (insert ID form) as identification.

Seal:
Signature of Notary Public

EXHIBIT A

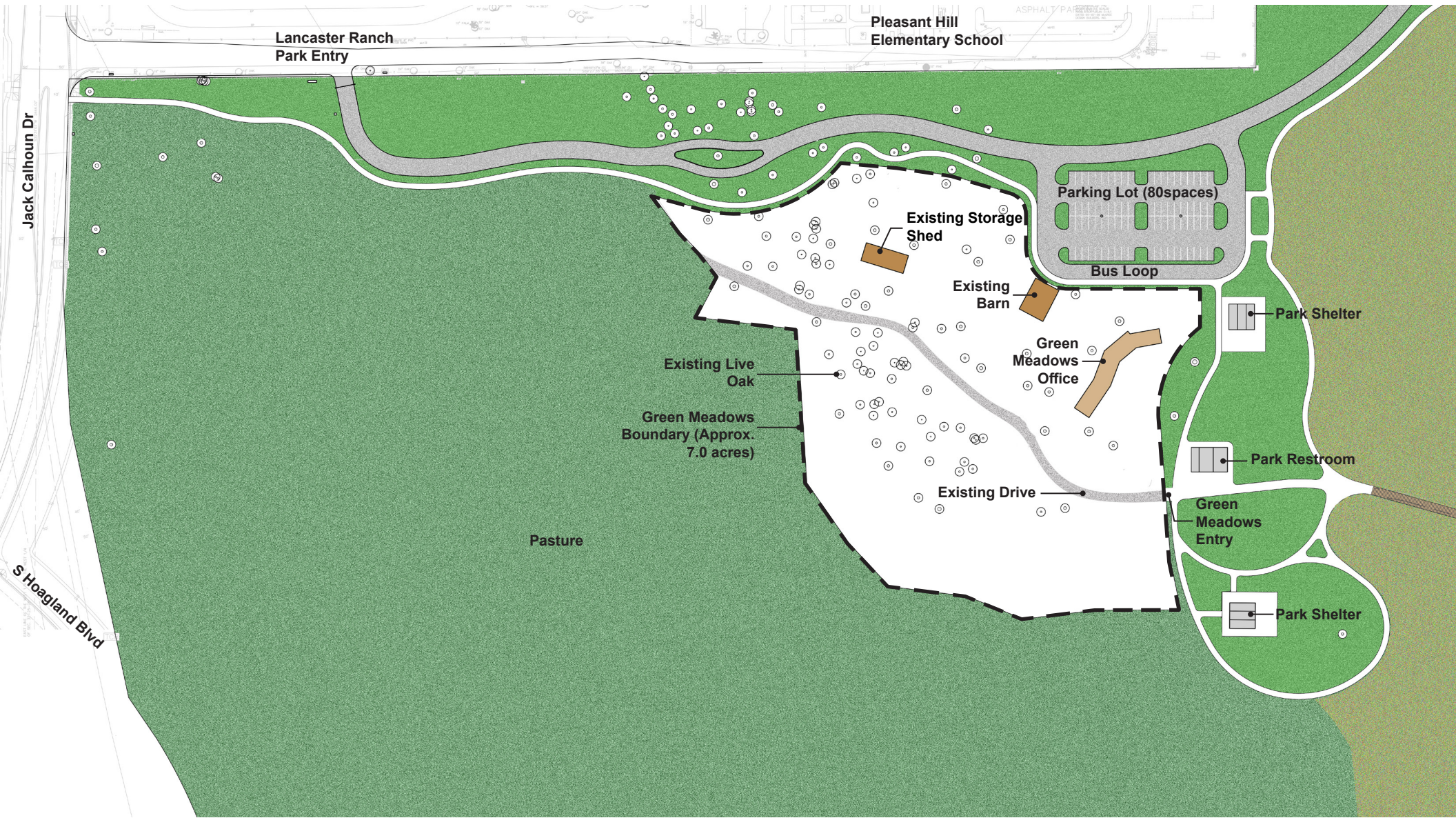


EXHIBIT B

Proposal

The purpose of this pictorial concept and attached Lease Agreement is to develop a public/private relationship between Green Meadows Farm and the City of Kissimmee Parks and Recreation to operate a petting zoo at the Lancaster Ranch Park.

The following is a preliminary list of structures, events and equipment needed to operate our programs.

Background

- ◆ Operated in Osceola County from 1988 to early 2018.
- ◆ Guided and non-guided tours of cows, calves, sheep, goats, alpacas, llamas, ponies, rabbits, pigs, chickens and tortoises.
- ◆ 75,000 annual visitors. Families, birthday parties, school groups and church groups.

Structures

- ◆ Permanent picnic shelters
- ◆ Small animal barn
- ◆ Equipment barn
- ◆ Supply sheds for storage
- ◆ Movable tarped shelters
- ◆ Permanent grazing fence
- ◆ Moveable 16' wire fence panels
- ◆ Tractors and hay wagons
- ◆ Remodel existing buildings

Site Preparation of West Grove

Special Events Throughout The Year

- ◆ Easter Egg Hunt
- ◆ Picture Perfect Floral Fantasy
- ◆ Monster Trucks and Cowboys
- ◆ Summer Camp Adventure
- ◆ Fall Corn Festival
- ◆ Pumpkin Picking
- ◆ Trail of Jack-o'-Lanterns
- ◆ Christmas Lights Adventure

- ◆Removal of scrap equipment
- ◆Cut dead trees and branches
- ◆Mow invasive weeds and brush
- ◆Trim low branches up to 8'

- ◆Mow and level ground
- ◆Put up permanent grazing fence
- ◆Plant trees
- ◆Put in gravel road for hayride

Playground Equipment

- ◆Hay wagon slides, barn facades, gazebos, giant tires, nonoperational tractors, haunted house, birthday picnic shelters.

Livestock

In order to maintain a quality interactive animal experience, Green Meadows will maintain the below listed type and minimum number of animals. Additional animal types are allowed but not required.

Chickens (min of 20)

Pig (min of 4)

Cattle (min of 16)

Alpaca/Llamas (min of 2)

Goats (min of 8)

Rabbits (min of 6)

Security

A livestock manager(s) employed by Green Meadows will live on the property. They will feed, clean, care for and protect the animals. Also they maintain, repair and protect the equipment and interest of Green Meadows and the City of Kissimmee Parks and Recreation.

Insurance

K & K Insurance Company will provide coverage of \$1,000,000 for each occurrence and \$5,000,000 general aggregate, as well as required Auto and Products liability insurance. The City of Kissimmee Parks and Recreation will be listed as an additional insured for which we will furnish a certificate annually.

Workmen's Compensation and other State of Florida requirements will be in force at all times.

ITEM 7.D**MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KISSIMMEE AND SKYVIEW KISSIMMEE DEVELOPER LLC REGARDING THE BEAUMONT DEVELOPMENT SITE****Request**

Approval of the Master Development Agreement between the City of Kissimmee and Skyview Kissimmee Developer LLC regarding the purchase and redevelopment of the Beaumont Development Site. Authorization for the City Manager or designee to execute Property Use License Agreement and Temporary Construction Easements, and any other documents that may be necessary to allow the Developer access to the property prior to the sale.

Explanation

The City has had a long-term goal of adding more housing in the Downtown Kissimmee Community Redevelopment Area (CRA) to increase the number of full-time residents in Kissimmee's Downtown and support the growing number of employers in the Medical Arts District. The Beaumont Development Site, a city-owned property of approximately 20 acres, is located on the south side of Martin Luther King Jr. Boulevard between Central and Clyde Avenues. The City acquired this property in 2018 for the purpose of fostering redevelopment consistent with the City's goals for the CRA and the Medical Arts District.

The City issued RFQ2020-006 to solicit a qualified private sector master developer to spearhead the redevelopment to include varying medium and high density residential unit types, mixed use and commercial buildings to compliment the nearby Medical Arts District. On November 2, 2020, the City Commission accepted Skyview's proposal and authorized the City Manager to negotiate with Skyview to acquire and develop the property.

The purpose of the Master Development Agreement is to set out the responsibilities, time periods, development regulations, and standards to govern the redevelopment of the Beaumont Development Site and memorialize the public-private partnership created to prepare the site for development and establish incentives to ensure a quality project that enhances downtown and the Medical Arts District.

Some of the highlights of the agreement are:

- Skyview will purchase approximately 13.7 acres of developable land from the City for \$2.74 million. The remaining 6.3 acres will remain city-owned for public uses including the extension of the surrounding street network through the property.
- The City will fund the installation of certain public infrastructure, such as public streets, sidewalks, storm drainage and a park. Skyview will construct these improvements in Phase 1.
- Phase 1 of the project will comprise the southwesternmost portion of the site and will consist of approximately 300 multi-family residential units, parking and amenities to be developed by Skyview.
- The City will make a good faith effort to acquire an additional parcel at the northwest corner of the site to incorporate into the City-owned portion of the project as previously contemplated and funded in the City budget.
- Performance based financial incentives will be granted to Skyview to assist in the development of the site in accordance with the City's CRA and Brownfield programs.

The public infrastructure portion of the project will include extension of the City street grid and sidewalk network through the property and construction of a master stormwater system to accommodate the new streets, the development project, and compensating storage for the portion of

the property that lies within the 100-year floodplain. Funding for the public infrastructure will be provided in the form of a planned tax-exempt debt issuance anticipated to be approximately \$5.9 million. Funding for the performance-based financial incentives is anticipated to total up to \$3.1 million to be credited over 15 years following completion of the first phase of the project. The debt service for the infrastructure funding and the costs of the financial incentives will be funded by the annual tax increment revenues generated by the development, Phase 1 of which is an estimated \$60 million investment.

Design and construction of Phase 1 and the infrastructure for all three phases will begin in 2022, with Phases 2 and 3 commencing at a later date within one to three years. Phases 2 and 3, which will front on Martin Luther King Jr. Boulevard, will include higher density mixed uses to include additional multi-family housing, offices, and supportive retail estimated at an additional \$140 million worth of investment by Skyview.

Recommendation

Staff recommends the City Commission approve the Master Development Agreement between the City of Kissimmee and Skyview Kissimmee Developer LLC regarding the purchase and redevelopment of the Beaumont Development Site, and authorize the City Manager to execute any documents that may be necessary to allow the Developer access to the property prior to the sale.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Master Development Agreement Kissimmee and Skyview. FFP-REV Corrected Signature Pg (R)
2. EXHIBIT A Beaumont Legal Description (R)
3. EXHIBIT B CONCEPTUAL SITE PLAN (R3)
4. EXHIBIT C PurchaseOptionAgreement Beaumont Development Parcel 12-17-21 (R)
5. EXHIBIT D API RESPONSIBILITY R13 (R)
6. EXHIBIT E MILESTONE SCHEDULE R13 (R)
7. EXHIBIT F Survey Boundry TOPO (R)
8. EXHIBIT G Sample Temp Construction Easement (R2)
9. EXHIBIT H - Staging Locations (R)
10. EXHIBIT I. SAMPLE Property Use License (R2)
11. EXHIBIT J- Insurance Requirements (R)

**MASTER DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF KISSIMMEE
AND
DOWNTOWN KISSIMMEE COMMUNITY REDEVELOPMENT AGENCY
AND
SKYVIEW KISSIMMEE DEVELOPER LLC**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, December, 2021 (the “Effective Date”) , by and between the **CITY OF KISSIMMEE**, a Florida municipal corporation, (hereinafter referred to as “City”); the **DOWNTOWN KISSIMMEE COMMUNITY REDEVELOPMENT AGENCY**, a special district created pursuant to Part III, Chapter 163, Florida Statutes, (hereinafter referred to as “Agency”) and **SKYVIEW KISSIMMEE DEVELOPER LLC**, a Delaware Limited Liability Company, having its principal place of business at 330 N Beaumont Ave, Kissimmee, FL 34741, (hereinafter referred to as “SkyView”), and each represents as follows:

WITNESSETH

WHEREAS, the City Commission adopted Resolutions 47-91 and 11-93 which found and determined that the downtown redevelopment district described therein, and expanded from time to time, is a blighted area within the meaning of Chapter 163, Florida Statutes, known as the Community Redevelopment Act of 1969 (the “Act”) and that redevelopment and improvement of such area was necessary in the interest of the public health safety and welfare of the residents of the City; and

WHEREAS, the City Commission created the Agency to carry out the community redevelopment purposes of the Act within the Redevelopment area (the “CRA”); and

WHEREAS, by Ordinance 1893 the City Commission established the redevelopment trust fund (the “Trust Fund”) into which tax increment is deposited each year by affected taxing authorities (the “Tax Increment”), in accordance with Section 163.387 of the Act; and

WHEREAS, the City Commission adopted the Downtown Kissimmee Community Redevelopment Plan (the “CRA Plan”) for the Redevelopment area in 1992, which is amended from time to time; and

WHEREAS, the CRA Plan describes the diminishing downtown Kissimmee population, and the lack of mixed-use residential development in the CRA and recognizes the need for reinvestment and improvements within the CRA to retain and attract residents; and

WHEREAS, the CRA Plan provides for a public-private development program to encourage private investment in the CRA; and

WHEREAS, City is the owner of approximately 20 acres in the redevelopment area located at the southwest corner of Martin Luther King Blvd. and Central Avenue, adjacent to downtown Kissimmee, also known the Beaumont Development Parcel, a description of which is attached hereto as Exhibit “A”; and

WHEREAS, City acquired the property in 2018 for the purpose of fostering redevelopment consistent with the City’s goals for CRA and the Medical Arts District; and

WHEREAS, on September 17, 2020, the City and the CRA issued RFQ2020-006 to solicit a qualified private sector master developer to spearhead the redevelopment to include varying medium to high density residential unit types, mixed-use and commercial buildings to compliment the nearby Medical Arts District, and improve overall infrastructure (the “Project”); and

WHEREAS, a Selection Committee reviewed and scored the proposals received based on specific selection criteria, and ranked SkyView as the most qualified; and

WHEREAS, on November 2, 2020, the City Commission consented to the conceptual plans for redevelopment of the real property proposed by SkyView attached hereto as Exhibit “B” and authorized the City Manager to negotiate with SkyView to acquire the real property for redevelopment; and

WHEREAS, SkyView is a real estate development company that has the skills, expertise and financial ability to redevelop the real property; and

WHEREAS, SkyView investigated, researched and completed its due diligence concerning the redevelopment of the Beaumont Development Parcel and satisfied itself that it could timely complete the concept; and

WHEREAS, City desires to collaborate with SkyView in the redevelopment of the Beaumont Development Parcel so as to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, to reduce the economic cost of development and to provide certainty to SkyView in the approval of development and assurances that they may proceed in accordance with existing laws and policies subject to the conditions of this Agreement; and

WHEREAS, the goal of the Parties is to create an attractive, safe and desirable area to work and reside, to establish higher density market rate development supporting growth of the

medical industry in the City, a pedestrian and transit-oriented community, and increase economic benefits to the City, all of which serve the best interest of the public; and

WHEREAS, the purpose of this Master Development Agreement is to set out the responsibilities, time periods, development regulations and standards to govern the redevelopment of the Beaumont Development Parcel, and memorialize the public-private partnership created herein with terms and conditions associated with City financed incentives to effectuate quality redevelopment; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

FINDINGS OF FACT

(A) Pursuant to Section 2(b), Art. VIII of the Florida Constitution, Section 166.021, Florida Statutes and Section 4 & 5, Article 1 of the Kissimmee City Charter, City has broad home rule powers to enter into Agreements and to convey real property in the public interest. The area identified as the Beaumont Development Parcel is located within CRA and is appropriate for redevelopment.

(B) The Project will meet the objectives and purpose of the CRA Plan.

(C) The Project is the next step in the process of transforming the Downtown into a new urban community taking advantage of its geographic location, access to local and regional transportation, and skyline views.

(D) The Project will dramatically enhance the appearance, character, economics and safety of the area and exhibit superior design features making downtown and the Medical District inviting to residences and businesses.

(E) The Project will meet a need for workforce housing, medical offices and supportive retail establishments serving employees and residents in the Medical District, thereby supporting local hospitals and fostering economic growth in the City.

(F) The proposed improvements and uses are consistent with the City's Comprehensive Plan.

(G) The proposed improvements, use and design are compatible with City's adopted Form Based Code.

(H) The proposed Project is in the best interest of the public health, safety, and welfare of the citizens of the City.

(I) Approval of this Agreement does not permit construction of the Project. Rather, this Agreement outlines the conceptual plan and terms upon which SkyView may acquire and develop the Property. Prior to construction, SkyView must obtain, through the City's permitting process, site specific plan approval and building permits consistent with the City's adopted Form Based Code. Consistent with the requirements of law, the City agrees to expedite review of all applications for approvals and permits submitted by SkyView to facilitate development consistent with the schedule contemplated herein. Upon approval and throughout the term of this Agreement, the municipal zoning and land use regulations in effect on the date of approval shall govern the development of this Project, except that SkyView will be required to conform to any changes in the Florida Building Code and Fire Code adopted during the term of the Agreement. The City reserves its police powers except to the limited extent to which the project acquires vested rights.

SECTION 1. GENERAL

1.01 PURPOSE OF THIS AGREEMENT.

The purpose of this Agreement is to set forth the rights, duties, and responsibilities of each Party as it pertains to the management and redevelopment of the Beaumont Development Parcel, including the Necessary Site Improvements and Ancillary Public Improvements as hereinafter defined. SkyView will serve as master developer, and, in concert with Affiliates of SkyView, is acquiring rights to purchase the Phase 1, pursuant to the Purchase Option Agreement, attached hereto as Exhibit "C". SkyView is also being granted an exclusive Purchase Option ("Option") with regard to the other development sites with the Beaumont Development Parcel (including Phase 2 and Phase 3), which Option shall be governed by the terms set forth herein.

1.02 INCORPORATION OF RECITALS AND FINDING OF FACTS.

The above Recitals and Finding of Facts are true and correct, and incorporated herein.

1.03 INCORPORATION OF ATTACHED EXHIBITS AND ADDENDA.

The Exhibits and Addenda attached to this Agreement shall be deemed incorporated in this Agreement.

SECTION 2. DEFINITIONS

2.01 AFFILIATE OF SKYVIEW.

“Affiliate of SkyView” shall mean any legal entity in which SkyView Kissimmee Developer LLC is a member, shareholder, limited partner or otherwise holds any ownership interest.

2.02 ANCILLARY PUBLIC IMPROVEMENTS.

“Ancillary Public Improvements” are those improvements which support the Minimum Development Program and are ancillary to and in addition to Necessary Site Improvements. They include, but are not limited to, demolition of existing structures located on the Beaumont Development Parcel, providing funding for public parking within the Beaumont Development Parcel, relocating stormwater and driveway facilities for the fire station, realigning and re-establishing the street grid serving the Medical District as shown on the revised conceptual plan attached as Exhibit “B”, relocating and resizing subsurface water and sewer utilities to locations a minimum of five (5) feet outside the building envelopes within the Beaumont Development Parcel, amendment or addition of soils if necessary to permit development of Phase 1 as shown in Exhibit “B” and design, permitting and construction of a neighborhood park and open spaces and a master stormwater system serving the entire Beaumont Development Parcel. The responsibility for the construction and cost of each of the Ancillary Public Improvements are set forth in Exhibit “D”.

2.03 Intentionally Omitted.

2.04 CITY CODE.

“City Code” shall mean the Code of Ordinances, including the Land Development Code and/or Form Based Code of the City of Kissimmee.

2.05 CLOSE OR CLOSING.

“Close” or “Closing” shall mean the transfer of title to all or a portion of the Beaumont Development Parcel, as further described herein.

2.06 CLOSING DATE.

“Closing Date” shall have the same meaning as set forth in the Purchase Option Agreement.

2.07 CLOSING COSTS.

“Closing Costs” shall mean customary and reasonable actual closing costs including costs or services directly related to sales, leases, or any other transactions related to or dispositions of

all or a portion of the Beaumont Development Parcel pursuant to the Purchase Option Agreement including, without limitation, brokerage fees and commissions, legal and accounting fees, appraisals, title insurance, surveys, environmental studies and normal prorations.

2.08 COMMENCEMENT DATE.

“Commencement Date” shall have the same meaning as set forth in Section 4.02.

2.09 DEVELOPABLE ACRES.

“Developable Acres” shall mean all of the land within the Beaumont Development Parcel except the fire station, fire station parking lot, existing streets, planned streets, master stormwater improvements and other new Ancillary Public Improvements such as sidewalks, and improved public rights of way which will not be relocated or modified pursuant to the Conceptual Plan.

2.10 DEVELOPMENT PHASE.

“Development Phase” shall mean each of the specific development projects defined in Exhibit “E”.

2.11 DIRECT MAINTENANCE OF LAND.

“Direct Maintenance of Land” shall mean the obligation of the City during the term of this Agreement to maintain the land owned by the City within the Beaumont Development Parcel, as set forth in Section 10.01 herein.

2.12 EFFECTIVE DATE.

“Effective Date” shall mean the date set forth in the first paragraph of this Agreement.

2.13 ENVIRONMENTAL REQUIREMENTS.

“Environmental Requirements” shall have the same meaning as set forth in Section 8.02.

2.14 EXPIRATION DATE.

“Expiration Date” shall have the same meaning as set forth in Section 3.01.

2.15 INTENTIONALLY DELETED.

2.16 FORCE MAJEURE.

“Force Majeure” shall mean any default or delay caused directly or indirectly, by strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of terrorism, fire, flood, earthquake, windstorm or hurricane, elements of nature or acts of God, acts of the public enemy, acts of superior governmental authority, riots, rebellion, sabotage, civil disorders, medical pandemics that require quarantine or social distancing, or any other similar cause beyond the reasonable control of the Parties hereto.

2.17 HAZARDOUS MATERIALS.

“Hazardous Materials” shall have the same meaning as set forth in Section 8.01.

2.18 IMPROVEMENTS.

“Improvements” shall mean improvements on the Beaumont Redevelopment Parcel including, but not limited to certain county public offices to be relocated in the future, and, after relocation, utility lines, easements and other permitted encroachments as shown on the survey attached as Exhibit “F”.

2.19 CITY REPRESENTATIVE

“City Representative” shall mean the person designated by the City to be the point of contact for SkyView.

2.20 MINIMUM DEVELOPMENT PROGRAM.

“Minimum Development Program” shall mean the plan described in the Response to Request for Proposals by SkyView as updated in Exhibit “B” and Exhibit “E” which shall include not less than the following:

Phase 1: 300 multi-family residential units on 7.25 acres and associated amenities (including pool), together with approximately 6.30 acres of public stormwater, park or open space uses approved by the City together with Necessary Site Improvements and Ancillary Public Improvements to support Phase 1, some of which may also support later phases.

Phase 2: 125,000 square feet of mixed-use, commercial, office and/or residential development on 4.15 acres, together with Necessary Site Improvements and Ancillary

Public Improvements to support Phase 2, subject to meeting applicable zoning requirements.

Phase 3: 100,000 square feet of mixed-use, commercial, office and/or residential development on 2.3 acres, together with Necessary Site Improvements and Ancillary Public Improvements to support Phase 3, subject to meeting applicable zoning requirements.

2.21 BEAUMONT DEVELOPMENT PARCEL.

“Beaumont Development Parcel” shall mean the real property described in Exhibit “A” attached hereto and incorporated herein containing approximately 20 gross acres.

2.22 NECESSARY SITE IMPROVEMENTS.

“Necessary Site Improvements” shall mean private driveways, sidewalks, fences, landscaping and buffers, utility connections, and other non-public improvements shown in the plans approved by the City which are required to develop a mixed-use development on the Beaumont Development Parcel consistent with the requirements of the City Land Development Code and/or Form Based Code, and the CRA Design and Technical Standards as they pertain to streets, streetscapes, and sidewalk designs. To the extent any Necessary Site Improvements will be dedicated to the City (for example, sidewalks built in public right of way), certain Necessary Site Improvements will be available to the public.

2.23 INTENTIONALLY DELETED.

2.24 PRICE.

“Purchase Price” shall have the same meaning as set forth in the Purchase Option Agreement.

2.25 PURCHASE OPTION AGREEMENT.

“Purchase Option Agreement” shall mean that agreement attached hereto as “Exhibit “C”.

2.26 REPSONSE TO SOLICITATION.

SkyView’s submittal in response to City’s Solicitation for Proposals for the redevelopment of the Beaumont Development Parcel entitled RFQ2020-006 Beaumont Redevelopment Project.

2.27 TERM

“Term” shall mean the “Initial Term” as set forth in Section 3.01, as may be extended pursuant to Section 3.02.

SECTION 3. TERM OF AGREEMENT.**3.01 DURATION OF TERM.**

Unless otherwise terminated early, the initial term of this Agreement for the redevelopment of the entire Beaumont Development Parcel shall be the period commencing as of noon on the Effective Date (also described herein as the “Commencement Date”) and expiring at noon on the date which is five (5) calendar years following the Commencement Date (“Initial Term”), or, if development has commenced and proceeded as contemplated in Section 4.02 hereof, the date on which all improvements to the Beaumont Development Parcel are completed as provided in Section 3.02 below, whichever occurs last.

3.02 EXTENSION.

If construction is not completed during the Initial Term, the Term of this Agreement shall be extended as follows:

- A. For construction projects which are in progress, the Term of the Agreement shall extend until such projects are complete, but no longer than twenty-four months from the expiration date of the Initial Term;
- B. For portions of the Beaumont Development Parcel which have not been acquired from the City, or which have been acquired from the City but construction has not commenced, the Term of the Agreement shall extend for an additional twenty-four months, provided SkyView requests and the City consents to the extension, which consent will not be unreasonably withheld by the City provided SkyView has continued to work in good faith.

SECTION 4. DESIGN, DEVELOPMENT AND USE OF BEAUMONT DEVELOPMENT PARCEL.**4.01 Phase 1.**

Phase 1 of the Project will consist of development of 7.6 acres into a multi-family residential development together with development of additional lands retained by the City for

associated Ancillary Public Improvements and/or Necessary Site Improvements. The 7.6 acre area is generally identified in Exhibit “B” hereto.

4.02 PHASING OF DEVELOPMENT.

The Parties acknowledge that the most efficient and economic development of the Beaumont Development Parcel depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it may be most economically beneficial to phase the Project.

Attached hereto as Exhibit “E” is the Development Schedule and Milestones, outlining the anticipated sequence of remaining development activities and a proposed timetable for redevelopment. SkyView shall have the right to acquire the acreage on which subsequent phases outlined in Exhibit “E” are to be built pursuant to the Purchase Option Agreement. The terms of the Purchase Option Agreement are set forth in Section 6 hereof. The Parties acknowledge that SkyView’s ability to develop pursuant to the Development Schedule set forth in Exhibit “E” is expressly conditioned upon funding and completion of the Ancillary Public Improvements within the time frames set forth in Exhibit “E”. Nothing herein shall prohibit the simultaneous development of multiple uses/phases nor the re-ordering of the development sequence provided the initial take down and development of property by SkyView shall include Phase 1, and the outside date for completion of development set forth in Exhibit “E” shall not be extended except as set forth herein.

The timing of the demolition and discontinuance of use of the various structures is included in Exhibit “E”.

4.03 DEVELOPMENT PLAN.

With the cooperation and input of SkyView, the City will review and process on an expedited schedule a replat of the Beaumont Development Parcel and concurrently will review and process a Site Plan for the Beaumont Development Parcel. The Site Plan will be consistent to the greatest extent practicable with the Form Based Code requirements applicable to the Beaumont Development Parcel per the City Code. Notwithstanding the foregoing, the City, consistent with the flexibility provided within the City Code, may approve waivers as provided in the Form Based Code applicable to the Beaumont Development Parcel as further depicted in the updated concept plan attached hereto as Exhibit “B”. Such revised Site Plan shall be and remain consistent with the Minimum Development Program set forth herein and the concept plan attached so that the intent of the Response to Solicitation is fully implemented. The development shall be designed and developed with interior and exterior finishes for the residential and commercial components of the

development typical for Class A market rate rental multifamily and commercial development in the Kissimmee Area.

4.04 DESIGN SERVICES.

SkyView shall be responsible for procuring the design of the redevelopment of the overall master conceptual plan for the Beaumont Development Parcel and for the design of the buildings constructed on Phase 1 as set forth in the Response to Solicitation and as further depicted in the revised concept plan attached hereto as Exhibit “B”. The architectural design for the Beaumont Development Parcel shall support the goals of the CRA Plan and shall be and remain consistent with the Minimum Development Program incorporated in the Response to Solicitation as modified herein. In connection with submittals for permitting, SkyView shall submit to the City in advance of Development Review Committee hearings sufficient documentation to permit the City Representative to complete review of the design for consistency with this Agreement, the CRA Plan’s goals and objectives, and City Code and standards, including drawings similar to the conceptual renderings of the proposed improvements included with the Response to Solicitation. City approval of plans and issuance of necessary permits shall not be unreasonably withheld or delayed. The standard of care for architectural and engineering services performed shall be judged by a standard of care that is consistent with the standards and quality prevailing among first-rate, qualified architectural and engineering firms engaged in projects of similar size and complexity.

4.05 DEVELOPMENT MANAGER SERVICES.

SkyView shall serve as the Development Manager and shall employ a general contractor to oversee the construction of the improvements. SkyView is professionally qualified to act as the Development Manager for the Project and will ensure that all contractors, sub-contractors, project managers and others engaged in the Project (the “Construction Service Providers”) have and maintain any and all licenses, permits, insurance, and other authorizations necessary to complete the Project and perform the services required hereunder. SkyView shall contractually require the Construction Service Providers to review all design and construction documents generated in connection with the Project and to become familiar with the Beaumont Development Parcel and the local conditions under which the Project is to be constructed. SkyView will employ Construction Service Providers with the capability and experience, including sufficient qualified and competent supervisory personnel, to efficiently and timely accomplish the redevelopment and perform the services required hereunder. SkyView shall comply, and shall contractually require all Construction Service Providers to comply, with all Applicable Laws. The City Representative may review and approve all Construction Service Provider contracts for the construction of Ancillary Public Improvements, which review shall not be unreasonably delayed and which approval shall not be unreasonably withheld.

SkyView will include a requirement in each Construction Service Provider contract for Ancillary Public Improvements that the Construction Service Provider warrant to the City that all labor furnished to perform the redevelopment under this Agreement will be competent to perform the tasks undertaken, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Agreement, and that the work will be of good quality, free from faults and defects, and in strict conformity with this Agreement. Construction Service Providers will be required to acknowledge that any work not strictly conforming to these requirements may be considered defective. All obligations related to or arising from all representations and warranties made to the City shall be obligations of, and shall be deemed incorporated in, the performance bond furnished by the Construction Service Providers for the benefit of SkyView and the City. For purposes of this Agreement, City and SkyView agree that the measure of quality shall be compliance with the requirements of this Agreement and compliance with building permits and construction sufficient to pass the City building department inspections during construction; issuance of a certificate of occupancy by the City shall be deemed to be satisfaction of the construction quality requirements set forth herein. Notwithstanding the foregoing, nothing herein shall limit or impair the rights of SkyView or the City under any warranties, bonds or guaranties provided by a Construction Service Provider.

SkyView shall cause the services and the work required by this Agreement, to be performed by Construction Service Providers and shall be responsible for the construction of the Project in strict conformity with the requirements of this Agreement, and shall pay for all labor, supervision, materials, supplies, furnishings, equipment and things required by this Agreement except for the costs that are the responsibility of the City per Exhibit “D”.

SkyView shall cause the Construction Service Providers to perform the services and work at a level, and be judged by a standard care, that is consistent with the standards and quality prevailing among construction management and general contracting firms licensed in Florida with experience in projects of similar size and complexity. SkyView shall carry out and complete the services and work in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby, and in strict accordance with this Agreement.

4.06 TITLE TO IMPROVEMENTS.

Certain Necessary Site Improvements, and Ancillary Public Improvements, anticipated to be constructed by SkyView will be constructed on, affixed to or buried in the property and will become or remain the property of the City. Accordingly, all must be constructed and installed so as to conform to City Codes and standards.

4.07 UTILITY RELOCATION AGREEMENTS.

If necessary to facilitate redevelopment in accordance with the approved Site Plan, City and SkyView shall cooperate to obtain any required utility relocation agreements with utility providers.

SECTION 5. DEVELOPMENT OF BEAUMONT DEVELOPMENT PARCEL.

5.01 LAND PARCELS.

SkyView has become familiar with the real property site and the local conditions on which the redevelopment is to occur and the impact on the project to be constructed and operated.

Notwithstanding the foregoing, the City acknowledges that certain mineral rights reservations, parking rights, unknown subsurface soil conditions or buried structures, above ground and sub-surface utilities and encroachments may exist (“Unknown Defects”) which the City and SkyView will cooperate to remove, correct or re-locate to the extent necessary to permit development consistent with the updated Concept Plan attached hereto as Exhibit “B”. If such Unknown Defects are identified, SkyView shall work with Construction Service Providers and consultants to develop a plan to cure or otherwise resolve the Unknown Defects and shall propose a course of action to the City. The Parties shall cooperate to identify and implement the most cost-effective and expedient means to relocate, remove, repair or release said Unknown Defects within the time frames established in Exhibit “D”. The Parties agree that if the cost to implement the selected remedy is Fifty thousand Dollars (\$50,000.00) or less, the cost shall be the responsibility of SkyView. If the cost to implement the selected remedy exceeds Fifty Thousand Dollars (\$50,000.00), the City shall bear the costs of remedying the Unknown Defect, but such City costs shall not exceed, in the aggregate, Five Hundred Thousand Dollars (\$500,000.00) without further approval by the City Commission. Upon receipt of approval of the plan by the City, and upon determining availability of funding to cover the costs of remedying the Unknown Defect, SkyView shall cause the approved course of action to be implemented as part of its Development Manager responsibilities, unless the Parties agree that the City will undertake any portion of the work directly.

5.02 NO OBLIGATION TO REMEDIATE.

SkyView shall have no obligation to undertake any environmental remediation of Hazardous Materials on the Beaumont Development Parcel if, (i) such Hazardous Materials existed on site prior to the Commencement Date and SkyView has not caused, permitted, contributed to or exacerbated the presence of such Hazardous Materials; or (ii) such Hazardous Materials have migrated onto the site from an off-site source, without SkyView’s knowledge and SkyView has not caused, contributed to or exacerbated the presence of such Hazardous Materials. Without limiting the generality of the foregoing, SkyView may assist the City in remediation of the asbestos identified in the Phase I Environmental Site Assessment, dated January 24, 2020 and

prepared by Professional Services Industries, Inc. (PSI project #06634795), by hiring a licensed asbestos remediation contractor in conjunction with demolition of the structures, which contractor shall be approved by the City Representative but such approval shall not be unreasonably withheld or delayed, but the land will not be conveyed to SkyView by the City until the remediation is complete.

SkyView shall have no obligation to close on any portion of the Property which has not been remediated by others to satisfy residential clean up standards promulgated by the State of Florida.

5.03 SKYVIEW PLATS.

In connection with obtaining the approvals of the Site Plan, SkyView may cause each of the development phases to be re-platted, approved by the City of Kissimmee and recorded in the Public Records of Osceola County.

All or any portion of any right of way on, through or adjacent to the Beaumont Development Parcel that would by operation of law accrue to the Phase 1, Phase 2 or Phase 3 parcels upon the vacation or abandonment of the same by the City shall be deemed a part of such parcel.

To the extent that encroachments and/or irregularities exist on the boundaries of the Beaumont Development Parcel, the City agrees to use best efforts to remove encroachments and/or acquire title to sufficient land to permit development as shown on Exhibit "B". Identified encroachments and boundary irregularities are depicted on Exhibit "F".

5.04 EASEMENTS.

City reserves to itself and any third party operating at the direction and under the supervision of the City the right to install utilities upon areas of the Beaumont Development Parcel identified in the approved development plans for such uses or to grant easements for utilities on the Beaumont Development Parcel consistent with development plans, provided that the granting and use of such easements does not materially interfere its use of the Beaumont Development Parcel in the furtherance of the obligations undertaken by SkyView by reason of this Agreement. Consistent with the terms stated here, SkyView consents to such installations by the City or any third party operating at the direction and under the supervision of the City.

5.05 NO OTHER EASEMENTS OR AGREEMENTS.

To the best of City's knowledge and belief, other than those agreements described above, and those identified in the title report previously provided to SkyView, there are no other

easements over, under, through or within the Beaumont Development Parcel nor any other rights or claims related to the use or control of the Beaumont Development Parcel that will not be relocated prior to construction of further development on the Beaumont Development Parcel. If a subsequent update to title report reflects the presence of a nondisclosed easement, agreement or other encumbrance, the identification of such easement, agreement or other encumbrance shall not constitute a default under this Agreement, nor of the limited warranty given here, but such limited warranty shall be deemed to be amended to include the presence of the previously non-disclosed easement, agreement or other encumbrance. Notwithstanding the foregoing, in the event a nondisclosed easement, agreement or other encumbrance prevents or delays SkyView's ability to perform its obligations herein or if the City fails to complete or pay for the Ancillary Public Improvements and Necessary Site Improvements for which it has responsibility as set forth in Exhibit "D", the development schedule shall be amended to permit SkyView and/or the City to complete the Ancillary Public Improvements and Necessary Site Improvements, cure or otherwise remedy any undiscovered easement, agreement or encumbrance to permit continued redevelopment. Other than liens filed in association with City funded construction projects on the Property, City will be under no obligation to cure or otherwise remedy any easement, agreement or other encumbrance by reason of its identification in this Agreement or the referenced title report, or a future title update, but such obligation will arise, if at all, only if and when there is a Purchase Option Agreement for a Development Phase and then only to the extent addressed in and required by the terms of the Purchase Option Agreement.

SkyView will cause the title agent to request an update to the title report within sixty (60) days of the Effective Date; The City will be responsible for the cost of the update. In the event a previously undisclosed easement, agreement or encroachment is unacceptable to SkyView in its sole discretion, and the City is unwilling or unable to cure or otherwise remedy such easement, agreement or other encumbrance after notice from SkyView of the unacceptable condition, SkyView shall have the right to terminate this Agreement, receive a refund of any deposits paid in connection with any Purchase Option Agreements executed for any development phase, and shall be relieved of any obligations under this Agreement.

5.06 USE OF BEAUMONT DEVELOPMENT PARCEL.

SkyView may use such portions of the Beaumont Development Parcel as are reasonably related to or required to allow the construction of those portions of the Necessary Site Improvements, Ancillary Public Improvements, and other construction activities contemplated to be completed by SkyView under this Agreement provided that such uses are consistent with this Agreement, the Site Plan, and the Purchase Option Agreement. SkyView shall not knowingly bring Hazardous Materials or substances or permit any Hazardous Materials or substances to be brought onto the Beaumont Development Parcel without prior written approval of the City, which approval may be withheld at the sole and absolute discretion of the City.

5.07 ACCESS GRANTED.

City does hereby agree to make the Beaumont Development Parcel available to SkyView in its capacity as Master Developer/Development Manager to the extent reasonably required to allow SkyView to cause the demolition of existing structures and the construction of Necessary Site Improvements, the Ancillary Public Improvements and to take all other actions permitted under this Agreement and the Purchase Option Agreement. Accordingly, upon approval of this Development Agreement, City shall grant to SkyView and SkyView's Construction Service Providers a non-exclusive temporary construction and access easement, generally in the form attached hereto as Exhibit "G", over the Beaumont Development Parcel for the purpose of constructing and/or utilizing the Ancillary Public Improvements and Necessary Site Improvements for each phase of the Project. This easement shall become effective on the Commencement Date and shall automatically terminate upon Termination of this Agreement or upon completion of all Ancillary Public Improvements and Necessary Site Improvements, constructed on City owned property, whichever occurs last.

At such time, and from time to time, as SkyView or an Affiliate of SkyView acquires any portion of the Beaumont Development Parcel, then to the extent that any other portion of the Beaumont Development Parcel would be rendered inaccessible or difficult to access for development consistent with the Response to Solicitation, City shall reserve for benefit of itself, its successors and assigns and SkyView and its successors and assigns, access rights for the remaining portion of the Beaumont Development Parcel to ensure access to a public street for so long as the same is needed in order to complete the redevelopment of the Beaumont Development Parcel as contemplated under this Agreement.

During construction, SkyView shall be entitled to stage construction materials and equipment in the locations set forth in Exhibit "H" pursuant to a temporary license for use to be executed between SkyView and the City generally in the form of the Property Use Agreement attached hereto as Exhibit "I". SkyView shall also be entitled to utilize the building(s) identified in Exhibit "H" for construction offices during the term of the Agreement. Following completion of construction, the staging areas will be returned to the condition they are in at commencement of use by SkyView. In the event offsite construction staging is required for Phase 2 or 3, the City and SkyView agree to work together to identify City owned property that can be used by SkyView for staging.

5.08 RIGHT OF ENTRY.

The City retains the full right of entry in and to the Beaumont Development Parcel for any purpose necessary, incidental to or in connection with its obligations hereunder, including (i) performing Direct Maintenance of Land (ii) exercising its governmental functions, or (iii)

conducting such inspections as the City in its discretion deems necessary. Once construction of the Necessary Site Improvements or the Ancillary Public Improvements associated with any Development Phase has commenced, then except in the case of an emergency, the City agrees to notify SkyView within a reasonable time in advance of all entries into that portion of the Beaumont Development Parcel under active development so as to minimize disturbance to the same. The City's right of entry includes access for the City's contractors, employees and/or agents and third parties acting with permission of the City.

SECTION 6. PURCHASE OPTION AGREEMENT

6.01 CITY SHALL NOT SELL BEAUMONT DEVELOPMENT PARCEL

During the term of this Agreement, except as is consistent with this Agreement, the City shall not enter into any contract or agreement to sell, convey or otherwise dispose of all or any portion of the Beaumont Development Parcel except as provided herein.

6.02 INTENTIONALLY DELETED

6.03 GRANT OF OPTION.

For the duration of this Agreement, the City grants to SkyView an option through the Purchase Option Agreement (the "Option") to purchase all of the Developable Acres in the Beaumont Development Parcel. The Beaumont Development Parcel may be acquired in one or more transactions, provided each such transaction must convey by platted lot or metes and bounds legal description a specific area within the Beaumont Development Parcel. Acquisition of the Beaumont Development Parcel shall be deemed to include all rights, privileges and easements appurtenant to the Beaumont Development Parcel (or portion thereof) acquired in the transaction. When SkyView desires to acquire all or any portion of the Beaumont Development Parcel Site pursuant to the Purchase Option Agreement, SkyView shall deliver to the City a completed purchase agreement substantially in the form of the purchase agreement included as an exhibit to the Purchase Option Agreement. Each parcel acquired as set forth herein shall be deemed an Option Parcel. For the absence of doubt, nothing herein shall require or prohibit the Beaumont Development Parcel from being acquired in a single transaction or multiple transactions, but any conveyance of an Option Parcel shall be subject to the terms of the Purchase Option Agreement as described below, and the initial take down by SkyView shall include the real property on which Phase 1 shall be constructed. The acquisition schedule shall, subject to the requirements of the Purchase Option Agreement, be determined in the sole discretion of SkyView.

The Purchase Option Agreement contains additional terms and conditions upon which the Option is granted. One material term of the Purchase Option Agreement is the reconveyance provision. The reconveyance provision provides that any property acquired pursuant to the

SkyView Purchase Option shall be subject to the City's right of reconveyance, as further described in the Purchase Option Agreement and providing in material part that if vertical development has not commenced on an Option Parcel(s) within twelve (12) months of Closing on that Option Parcel, unless such period is extended as a result of an act of Force Majeure, SkyView (or if SkyView has assigned its purchase agreement to a third party), the third party purchaser will, at the request of the City, convey the Option Parcel(s) back to the City. This reconveyance provision will be included in the deed and be subordinated only to taxes, assessments and mortgages of record incident to the acquisition by the Grantee under the deed of the Option Parcel. Notwithstanding the foregoing, by its terms, the reconveyance condition shall be deemed satisfied on the earliest to occur of the payment of impact fees, or issuance of a building permit, for an Option Parcel.

Once an Option Parcel is purchased by SkyView, an Affiliate of SkyView, or an approved third party as permitted pursuant to Section 11, Assignment, subject only to the reconveyance obligation, the purchaser of the Option Parcel shall be deemed to have vested its rights with regard to the acquired parcel, and all rights and agreements between the Parties applicable to the acquired parcel shall accrue to the purchaser without regard to subsequent expiration or other termination of this Agreement.

SECTION 7. TERMINATION.

This Agreement may be terminated by the City if SkyView fails to construct the development consistent with the Development Schedule set forth in Exhibit “B”. Prior to such termination, the City shall provide SkyView sixty (60) days written notice, which notice may be withdrawn if SkyView either commences construction or amends Exhibit “B” with the consent of the City prior to the expiration of the sixty (60) day period, or such additional time as agreed to by the Parties. Termination of this Agreement shall not impair any of SkyView’s rights to or ownership of the all or any portion of the Beaumont Development Parcel, subject only to the reconveyance requirement, if this Agreement is terminated after SkyView closes on the such parcel.

SECTION 8. ENVIRONMENTAL REQUIREMENTS.

8.01 ENVIRONMENTAL REMEDIATION.

SkyView shall not be obligated pursuant to this Agreement to perform or pay for any environmental remediation, nor shall anything in this Agreement affect any pre-existing obligation of the City to perform environmental remediation work.

Notwithstanding the foregoing, as of the Effective Date there is required asbestos remediation of the onsite structures required prior to demolition of the structures that has not

been completed. SkyView has agreed to retain an asbestos remediation contractor to cause the removal of the asbestos at the City's cost prior to conveyance of the property to SkyView. Other than the asbestos remediation work, the City has caused environmental review of the Beaumont Development Parcel and has determined that any required environmental remediation has been completed and has received "no further action" determinations, indemnities or releases from federal or state environmental regulatory agencies in connection with any environmental remediation undertaken on the Beaumont Development Parcel. The City has provided copies of such environmental review documentation, assurances, "no further action" determinations, indemnities or releases to SkyView. SkyView is entitled to rely on such determinations.

Notwithstanding any provision in this Agreement, the City shall retain all rights it may have against any person or entity, pertaining to the presence or alleged presence, now or in the future, of any Hazardous Materials at, on, under or about the Beaumont Development Parcel, including all rights to enforce any provisions of any agreements or licenses that the City Attorney, in his or her sole discretion, deems necessary or appropriate to: (i) compel compliance with Environmental Requirements as defined in Section 8.02 herein; (ii) recover any of the City's costs of environmental investigation and remediation; and/or (iii) assert any claims or defenses related to environmental conditions at Beaumont Development Parcel in any existing or future administrative, judicial or arbitration proceedings.

8.02 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS.

SkyView and the City shall each, in conducting any activity on the Beaumont Development Parcel, comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders, as amended from time to time (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. For purposes of this Agreement, the terms "Hazardous Materials" shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), used oil or any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any rules or regulations promulgated pursuant to such statutes.

Neither SkyView nor the City will knowingly cause, and both the City and SkyView will prohibit any discharge or disposal of any Hazardous Materials, above government approved levels, to storm or sanitary sewer systems, or ground water flowing through or discharging onto the Beaumont Development Parcel, or to the lands that comprise the Beaumont Development Parcel.

SkyView shall make available for the City's review and approval all documents and materials that SkyView prepares pursuant to any requirement under this Section. The City's

approval shall be required prior to SkyView submitting any such documents or materials to any governmental agency, except where such prior approval would prevent SkyView from complying in a timely manner with any requirement to file any notice or report regarding any release or threatened release of Hazardous Materials at, on, under or about the Beaumont Development Parcel. SkyView shall provide to the City copies of all, such notices and reports of releases or threatened releases when they are filed with the appropriate governmental agency.

SECTION 9. SKYVIEW RESPONSIBILITIES

9.01 COMPLIANCE WITH ALL LAWS AND REGULATIONS.

SkyView agrees not to use or permit the Beaumont Development Parcel to be used for any purpose prohibited by laws of the United States, the State of Florida and the City, or not authorized hereunder, and it further agrees that it will use the Beaumont Development Parcel in accordance with all applicable federal, state and local laws, rules and regulations adopted by the City. SkyView further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from SkyView or which the City Representative may reasonably request relating to SkyView's operations.

9.02 RESTRICTIONS ON CHANGES AND ALTERATIONS.

SkyView agrees not to commence construction on Phase 1 or any other portion of the Beaumont Development Parcel without first obtaining all regulatory approvals, licenses, permits or the like in order to fully comply with all applicable laws, statutes, ordinances, codes and regulations governing the activity proposed to be undertaken by SkyView.

9.03 NOISE, ODORS, VIBRATIONS AND ANNOYANCES.

SkyView shall conduct its operations in an orderly and proper manner so as not to commit any unreasonable nuisance on the Beaumont Development Parcel or annoy, disturb or be offensive to others in the vicinity of the Beaumont Development Parcel and shall take all reasonable measures to eliminate or mitigate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations associated with SkyView's construction activities. Notwithstanding the foregoing, the parties acknowledge that during construction of Necessary Site Improvements, Ancillary Public Improvements, and vertical construction of the building pads, customary construction practices may result in noise, odor, vibration, and disruption of the Beaumont Development Parcel and surrounding area and as a result SkyView may request the City close certain roads from time to time in accordance with City procedures to minimize risk of harm to the public and to expedite construction activities. SkyView will use its best efforts to plan and implement the required construction so as to minimize both the extent and duration of the noise, odors, vibrations and annoyances during the construction process.

9.04 NO LIENS.

SkyView shall not agree to the imposition of any mortgage, deed of trust, lien or encumbrance on this Agreement or any portion of the Beaumont Development Parcel which has not been purchased by SkyView, an approved Affiliate or Third Party Purchaser without the prior written consent of the City. Additionally SkyView shall not permit any lien on SkyView land if such lien or foreclosure on lien would harm the remaining City owned parcels. SkyView acknowledges and agrees that it has no authority to mortgage, pledge or encumber the City's interest in the Beaumont Development Parcel. The purchase agreement executed pursuant thereto for all or a portion of the Beaumont Development Parcel shall not constitute a lien or an encumbrance for purposes of this Section.

9.05 COVENANTS CONDITIONS & RESTRICTIONS.

Without the prior written approval of the City, which shall not be unreasonably withheld or delayed, no owners association or covenants, conditions and restrictions shall be imposed on or recorded against the Beaumont Development Parcel as a whole as long as any portion of the Beaumont Development Parcel is owned by the City. Lands within the Beaumont Development Parcel which are not owned by the City are not subject to this restriction.

9.06 UTILITY SERVICES.

It is recognized that water, sewage disposal, wastewater disposal, gas, electricity, light, heat, power, telephone or other utility services (collectively “utility services”) exist on or adjacent to the Beaumont Development Parcel to serve nearby development. As such, SkyView agrees that during the development of the Necessary Site Improvements and/or Ancillary Public Improvements, and during the Development Phases it shall, in consultation with the City, take all reasonable and appropriate steps to ensure the least amount of disruption in utility services to existing development located nearby and facilities developed within the Beaumont Development Parcel. SkyView shall coordinate the timing and extent of the development impacts with the City so as to minimize disruption and inconvenience to such users and provide notice to the City detailing the timing and duration of the development impacts and the likely duration of any interruption in utility services as a result of such development activities. Notwithstanding the foregoing, SkyView shall not be liable for any claims, causes of action, damages or attorney’s fees resulting from the disruption of utility services provided SkyView has not been grossly negligent, and has complied with the all applicable provisions of the City Code, the provisions of this Section and applicable permit requirements imposed by the City authorizing the construction of the Necessary Site Improvements and/or Ancillary Public Improvements.

9.07 INSURANCE AND SUBROGATION.

Prior to the commencement of construction of the Necessary Site Improvements or Ancillary Public Improvements, and the Development Phases SkyView shall procure and maintain insurance policies providing coverage consistent with Exhibit “J” attached hereto and incorporated

herein by this reference for general commercial liability, professional services, and directors' and officers' liability. The general commercial liability and professional services policies shall list the City as an additional insured. SkyView shall cause a certificate of insurance in the standard industry form to be executed by SkyView's insurance carrier or broker and such certificate shall be delivered to and maintained throughout the term hereof, as may be extended. Upon the City Representative's request, SkyView shall make copies of the insurance policies available for review at the City Representative's office. If the insurance policies referred to in this section require an endorsement to provide for continued coverage where there is a waiver of subrogation, then SkyView shall cause any such policies to be so endorsed.

The City and SkyView each waive any rights of subrogation that either party may have with respect to insurance proceeds received by the other party.

9.08 INTENTIONALLY DELETED.

SECTION 10. CITY RESPONSIBILITIES

10.01 MAINTENANCE OF PUBLICLY DEDICATED AREAS.

Upon City's acceptance of a dedication of public spaces, including but not limited to, open space, right-of-way, and other public areas within the Beaumont Development Parcel, the City shall be responsible for maintenance of such areas. The City is under no obligation to accept such areas for maintenance unless and until all conditions regularly applied and considered by the City in evaluating the suitability of such areas for ongoing maintenance have been met and after review, accepted by the City in the ordinary course.

10.02 MOBILITY/ IMPACT FEE CREDITS

In all events, when calculating the anticipated public facilities impacts of new development on the Beaumont Development Parcel for purposes of determining applicable impact fees, prior uses and their impacts on public facilities will be considered. Credit for prior uses will be determined pursuant to existing city ordinances with regard to mobility fees and parks and recreation impact fees and will be allocated to each Development Phase within the Beaumont Development Parcel to the greatest extent permissible thereby.

10.03 CITY SUPPORT OF ECONOMIC DEVELOPMENT AND WORKFORCE HOUSING.

In order to facilitate advancing the goals of the CRA Plan, City will provide economic development incentives to SkyView as outlined in Exhibit "D" including but not limited to a

reduction or waiver of building permit fees, a reduction or waiver of parks and recreation impact fee credits, additional public parking, funding for completion of the Ancillary Public Improvements, reduction or waiver of mobility fees, and funding pursuant to the available CRA funding, grants and incentive programs. In order to increase the availability of workforce housing located in proximity to the Medical District, the City shall provide economic support for development of 5% of the units in Phase I as workforce housing affordable to household with incomes between 80-120% of Area Median Income, with a minimum of sixteen (16) units available for households with incomes at 80% AMI. ("Workforce Units"). City support is described in Exhibit "D". SkyView Kissimmee I, LP., its successors, heirs or assignees, will provide an annual report to the City documenting income verification for residents of Workforce Units.

SECTION 11. ASSIGNMENT

11.01 ASSIGNMENT.

An Assignment occurs when SkyView assigns a portion of its interest in this Agreement. SkyView shall not assign this Agreement, nor any interest arising herein, without the prior written consent of the City. If SkyView desires to assign a portion of its interest in this Agreement to a third party and SkyView will remain the party directing the redevelopment of the Beaumont Development Parcel (i.e. a partial assignment to bring another party, such as an alternate developer for Phase 3, or a transfer of interests made in connection with financing the development), then such assignment will be subject to the review and approval of the City, but such approval shall not be unreasonably withheld or delayed. In conjunction with development of the design documents, the Parties agree to jointly identify quality criteria required for Phase 3 to be built onsite prior to any assignment occurring, and any such assignment will be subject to compliance of the assignee with the quality criteria established by the Parties.

If SkyView desires to assign all or a material portion of its interest in this Agreement to a third party whereby SkyView would cease to be the party responsible for the overall redevelopment of the Beaumont Development Parcel, then such an assignment shall be subject to the review and approval of the City, but the City may in such instance, withhold its consent in its sole and absolute discretion.

An assignment by SkyView of all or any part of SkyView's interest under this Agreement by operation of law or otherwise **shall not** include SkyView's right to exercise its Purchase Option unless specifically agreed to in writing by the City. Any attempt by SkyView, except as permitted herein, to assign or in any way transfer its interest in this Agreement, in whole or in part, without such prior written consent of the City shall, at the option of the City, constitute a default under this Agreement and all rights of SkyView hereunder shall be determined pursuant to the requirements

of Section 13.01 below. Any consent by the City to a transfer by SkyView shall not be deemed a consent to any subsequent transfer.

Upon a permitted assignment, the Assignee shall assume the rights and obligations of SkyView; if SkyView retains any interest in this Agreement, an Assignee's Default hereunder shall not impair SkyView's remaining rights and obligations under this Agreement, and the City shall not be entitled to enforce remedies against SkyView unless SkyView independently defaults under the Agreement.

SECTION 12. INDEMNITY, INSURANCE AND BONDS

12.01 INDEMNITY.

SkyView hereby agrees to release and indemnify and save harmless the City, its officers, agents, employees and elected and appointed officials from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of SkyView's operations in connection herewith or SkyView's use or occupancy of any portion of the Beaumont Development Parcel and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of SkyView.

The City, in turn, and subject to the limitations of applicable law, agrees to indemnify SkyView, its officers, agents, and employees from damages resulting solely from (1) the sole negligence or intentional misconduct of the City's officers, agent and employees; or (ii) the City activities on the Beaumont Development Parcel.

SECTION 13. DEFAULT, CURE AND REMEDIES

13.01 DEFAULT BY SKYVIEW.

A. SkyView shall be in default under this Agreement if SkyView:

(i) Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or

(ii) Transfers its interest under this Agreement in contravention of the requirements of Section 11 of this Agreement; or

(iii) Suffers any lien or attachment to be filed against the Beaumont Development Parcel because of any act or omission of SkyView, and is not discharged or contested by SkyView in good faith by proper legal proceedings within ninety (90) days after receipt of notice thereof by SkyView; or

(iv) Fails to keep, perform and observe any promise, covenant or agreement set forth in this Agreement, the Purchase Option Agreement or any purchase agreement for Phase 1, 2 or 3 and such failure continues for a period of more than ninety (90) days after delivery by the City of a written notice of such breach or default, except where a shorter period is specified herein. Furthermore, if SkyView's fulfillment of its obligation requires activity over a period of time and SkyView within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues its performance without interruption except for causes beyond its control then such performance by SkyView will absolve SkyView of being in default under this Agreement as to the matter notice and for which SkyView has commenced the cure.

Notwithstanding the foregoing, a default shall not impair, restrict, prohibit or otherwise affect the rights of SkyView to continue development of real property which has been purchased from the City pursuant to the terms of any purchase agreement prior to the date of the default.

13.02 DEFAULT BY CITY.

(A) City shall be in default under this Agreement if:

(i) City enters into any agreement with a third party that materially encumbers, devalues or otherwise adversely affects the Beaumont Development Parcel Site without SkyView's express written consent and/or waiver of SkyView's rights under this Agreement or the Purchase Option Agreement; or

(ii) City fails to keep, perform and observe any promise, covenant or agreement set forth in this Agreement, the Purchase Option Agreement or any purchase agreement for Phases 1, 2 and/or 3 and such failure continues for a period of more than ninety (90) days after delivery by SkyView of a written notice of such breach or default, except where a shorter period is specified herein. Further, where the City's fulfillment of its obligation requires activity over a period of time and the City within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control then such performance by the City will absolve the City of being in default under this Agreement as to the matter noticed and for which the City has commenced the cure.

13.03 REMEDIES.

(A) If SkyView defaults under Section 13.01, the City may exercise any one or more of the following remedies:

(i) The City may elect to allow this Agreement to continue in full force and effect and to enforce all of the City's rights and remedies hereunder; or

(ii) The City may cancel and terminate this Agreement and the Purchase Option Agreement in the manner specified therein, provided thirty (30) days written notice is given to SkyView of its election to terminate, at the end of which time all the rights hereunder of SkyView shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) day period or where fulfillment of SkyView's obligation requires activity over a period of time and SkyView within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control, then such performance will absolve SkyView of being in default under this Agreement as to the matter noticed and for which SkyView has commenced the cure.

(iii) If City exercises the right to terminate by reason of a default by SkyView, and SkyView fails to timely cure such default, then the City will have the right, but not the obligation, to acquire from SkyView at SkyView's actual cost any engineering or development plans prepared by SkyView or consultants working with SkyView and pertaining to all or any portion of the Beaumont Development Parcel owned by the City so as to enable the City to continue the redevelopment of the Beaumont Development Parcel in a manner consistent with the redevelopment undertaken and completed at the time of the default by SkyView.

(B) If City defaults under Section 13.02, SkyView may exercise any one or more of the following remedies:

(i) SkyView may elect to allow this Agreement to continue in full force and effect and to enforce all of SkyView's rights and remedies hereunder; or

(ii) SkyView may cancel and terminate this Agreement and the Purchase Option Agreement in the manner specified therein, provided thirty (30) day's written notice is given to City of its election to terminate, at the end of which time all the rights hereunder of the City shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) day period. Where fulfillment of City's obligation requires activity over a period of time and the City, within ten (10) days of notice, commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control, then such performance will

absolve the City of being in default under this Agreement as to the matter noticed and for which the City has commenced the cure.

For any Development Phase in which SkyView has not yet acquired the real property on which the phase shall be constructed, within thirty (30) days of termination, SkyView shall submit to the City documentation of the actual costs incurred by SkyView prior to the City default. Actual costs shall include costs associated with Development Phases, including but not limited to amounts paid to third parties for engineering, architectural, legal and project management services, and construction costs for Ancillary Public Improvements under construction or installed prior to default. The City will reimburse SkyView for documented actual costs, provided however that the City's obligation to reimburse SkyView for actual costs shall not exceed five hundred thousand dollars (\$500,000.00).

For any Development Phase in which SkyView has acquired the real property on which the Development Phase is to be constructed, upon the City's default and SkyView's election to terminate, at SkyView's request, the City agrees to reimburse Seller for documented actual development and construction costs incurred by SkyView prior to the City default, which costs may include amounts paid to third parties for engineering, architectural, legal and project management services, financing costs, and all construction costs for development of the Project. At SkyView's request, the City also agrees to return the balance of the purchase price to SkyView and to accept reconveyance of the real property, AS-IS, and SkyView shall thereafter have no further obligation under this Development Agreement or the Purchase Option Agreement.

Should SkyView and the City concurrently be in default, and neither party is able to cure such defaults in accordance with this Agreement, then the Parties shall initially attempt in good faith to negotiate a resolution as to the appropriate remedies given the extent of such defaults, failing which the same shall be settled by a reputable person mutually agreed upon by parties and, in case of further disagreement, with an arbitration board of three persons, one to be selected by each party to this Agreement and a third to be selected by the other two arbiters.

Notwithstanding the foregoing, the City's obligation to fund costs associated with Ancillary Public Improvements listed in Exhibit "D" as City funded improvements for Phase 1 shall not terminate by Skyway's termination of this Agreement as a result of City's default, but such obligation shall be limited as to Phase 1 to Five Million, Nine Hundred Thousand Dollars (\$5,900,000.00) without further approval of the City Commission, and the City agrees to reimburse SkyView for all actual costs incurred in connection with planning, design and construction of those Ancillary Public Improvements. The City will also reimburse SkyView for documented actual costs associated with resolving Unknown Defects pursuant to Section 13.03.

13.04 WAIVERS.

No failure of the City to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, nor any failure by the City to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by SkyView shall constitute a waiver at a future date of any such term, covenant or agreement or a waiver of any such right or remedy the City may have against SkyView at a future date. In like manner, no failure by SkyView to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, nor any failure by SkyView to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment or performance which continues after a default by the City shall constitute a waiver at a future date of any such term, covenant or agreement or a waiver of any such right or remedy that SkyView may have against the City.

13.05 NO PERSONAL LIABILITY.

Notwithstanding any other provision of this Section 13 or of this Agreement, no director, officer, employee or agent of SkyView shall be personally liable to the City for any breach or default of this Agreement other than a breach or default that results from such person committing fraud. The City agrees that the doctrine of piercing the corporate veil shall not be used by the City to seek or obtain any personal liability or judgment against any individual director, officer, employee or agent of SkyView. In like manner, no member of the elected City Commission or any other appointed City board member nor any employee or agent of the City shall be held personally liable to SkyView for any breach or default of this Agreement other than a breach or default that results from such individual person committing fraud.

SECTION 14. TERMINATION OF AGREEMENT

This Agreement and the Purchase Option Agreement shall automatically terminate and be of no further force or effect when the Beaumont Development Parcel has been fully developed, unless terminated earlier due to a default or mutual agreement by the City or SkyView.

SECTION 15. MISCELLANEOUS PROVISIONS

15.01 ATTORNEYS' FEES.

Each party waives the right to attorney fees and costs for enforcement of this Agreement, including any legal actions or appeal. SkyView and City will make commercially reasonable efforts to include such a waiver in contracts with any consultants, subcontractors and affiliates of either party.

15.02 AGREEMENT BINDING UPON SUCCESSORS.

This Agreement, subject to the provisions of the Section entitled "Assignment," shall be binding upon and extend to the permitted successors and permitted assigns of the respective parties hereto.

15.03 VENUE.

Venue for any action arising under this Agreement or any amendment or renewal shall be in the Osceola County, Florida. Additionally, any agreements SkyView enters which, upon litigation, may involve the City shall also have venue in Osceola County, Florida.

15.04 FLORIDA LAW.

This Agreement is made, shall be deemed to be made, and shall be construed in accordance with the laws of the State of Florida.

15.05 FORCE MAJEURE.

Neither Party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to Force Majeure. Such non-liability only continues for as long as the Force Majeure event is in place.

15.06 INDEPENDENT CONTRACTOR.

SkyView and its Construction Service Providers shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City. Further, notwithstanding the obligations for mutual cooperation provided for herein, the City and SkyView and its Construction Service Providers are not partners and the formation of a partnership is not intended by the parties hereto.

15.07 NOTICES.

All notices required to be given to the City or SkyView hereunder shall be in writing and sent by certified mail, return receipt requested, by nationally recognized overnight courier service or hand delivered to:

CITY:	City of Kissimmee
	Attn: Mike Steigerwald
	101 Church Street
	Kissimmee, Florida 34741
	Email: mike.steigerwald@kissimmee.gov

with a copy to: City Attorney
101 Church Street
Kissimmee, Florida 34741
Email: olga.sanchezdefuentes@kissimmee.gov

SKYVIEW: 330 N Beaumont Ave.
Kissimmee, FL 34741
Attn: Stephen Liberty
Email: sliberty@skyviewcompanies.com

with a copy to: Anne Q. Pollack, Esq.
Fletcher Fischer Pollack, P.L.
433 Central Avenue Suite 400
St. Petersburg, Florida 33701
Email: apollack@ffplegal.com

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Florida to receive such notices. The effective date of service of any such notice shall be three (3) days after such notice is mailed or on the day of hand delivery during normal business hours.

15.08 SECTION HEADINGS.

The section headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

15.09 SEVERABILITY.

If any provision in this Agreement is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected. Furthermore, such invalid provision shall be automatically replaced with a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable, and this Agreement shall be deemed reformed accordingly.

15.10 THIRD PARTY BENEFICIARY.

It is the intent of the parties that no third party beneficiary interest is created in this Agreement. The Parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

15.11 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.

SkyView, its officers, directors, employees and agents shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 or any successor thereto, concerning the use, possession or sale of alcohol or drugs.

15.12 NONDISCRIMINATION.

In connection with the performance of work under this Agreement, SkyView agrees not to unlawfully discriminate and to include such provision in all subcontracts hereunder.

15.13 AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.

This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or affect whatsoever, unless provided in writing and agreed to by the Parties.

15.14 FINAL APPROVAL.

This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Commission and fully executed by all signatories of the City, following any appeal periods, if applicable.

15.15 AUTHORITY.

The individual executing this Agreement on behalf of SkyView represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of SkyView.

15.16 GOOD FAITH AND FAIR DEALINGS.

The City and SkyView acknowledge and agree that in the implementation, interpretation and enforcement of this Agreement, the Parties shall apply commercially reasonable standards of good faith and fair dealing.

15.17 JOINTLY DRAFTED; RULES OF CONSTRUCTION

SkyView and the City agree that this Agreement was jointly drafted, and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

15.18 PROCUREMENT REQUIREMENTS.

To the extent SkyView causes Ancillary Public Improvements and/or Necessary Site Improvements to be completed on behalf of the City, SkyView agrees to adopt and implement purchasing policies and procedures for contracting to include construction, services, goods and professional services. SkyView agrees to ensure that it will purchase and contract for materials, goods and services at the best value and quality needed to provide the very best services and supplies for the Beaumont Development Parcel development program. SkyView recognizes the importance of good supplier relationships and will make every effort to promote fair and equitable treatment of all vendors in the procurement process. To that end SkyView will conform its procurement practices to procurement procedures established by the City for City contracts, except that SkyView shall have no obligation to select the low bidder for any work unless such bidder is deemed qualified to complete the work for which the bid is submitted.

If for any reason the City causes Ancillary Public Improvements to be completed, the City shall cause such work to be completed consistent with the timeframes set forth in Exhibit "E".

The Phase 1 parcel(s) and other parcels in the Beaumont Development Parcel shall be constructed in accordance with all applicable laws, codes, statutes, ordinances, rules and regulations, including, but not limited to, the City Code, Florida Building Code and the Americans with Disability Act.

15.19 SURVIVAL OF PROVISIONS FOLLOWING ANY CLOSING

Any provision of this Agreement that is related to parcels in the Beaumont Development Parcel and which requires performance following the related Closing of a parcel shall continue in force and effect following the City's conveyance of such parcel until the expiration of all applicable statutes of limitation.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Development Agreement the day and year first above written.

ATTEST

CITY OF KISSIMMEE

By: _____
City Clerk

By: _____
Mayor/Mayor Protem

Print Name: _____

Print Name : _____

Approved as to form and legality for the use and reliance of the City of Kissimmee, Florida, only.

By: _____
City Attorney

WITNESS:

SKYVIEW KISSIMMEE DEVELOPER, LLC
a Delaware limited liability company

By: E. S. L.

By: [Signature]

Print Name: Elliot Lief

Print Name: Michael Dana

By: [Signature]

Title: Member-Manager

Print Name: Charles Shaw

STATE OF FLORIDA New Jersey
COUNTY OF Monmouth)
) ss

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16 day of December, 2021, by Michael Dana as Member Mgr of SkyView Kissimmee Developer, LLC, a Delaware limited liability company, who is personally known to me or has produced _____ as identification.

[Signature]

NOTARY SEAL:

NOTARY PUBLIC

Laura A. Etienne
Notary Public State of New Jersey
My Commission Expires 08/11/2025

EXHIBITS LIST

EXHIBIT A	SITE LEGAL DESCRIPTION
EXHIBIT B	CONCEPTUAL PLAN BEAUMONT REDEVELOPMENT
EXHIBIT C	PURCHASE OPTION AGREEMENT
EXHIBIT D	RESPONSIBILITY FOR ANCILLARY PUBLIC IMPROVEMENTS
EXHIBIT E	DEVELOPMENT SCHEDULE AND MILESTONES
EXHIBIT F	SURVEY
EXHIBIT G	TEMPORARY CONSTRUCTION AND ACCESS EASEMENT
EXHIBIT H	STAGING LOCATIONS
EXHIBIT I	PROPERTY USE AGREEMENT (TEMPORARY LICENSE)
EXHIBIT J	INSURANCE REQUIREMENTS

EXHIBIT “A” LEGAL DESCRIPTION

.

EXHIBIT “B”
(Incorporated by Reference)
CONCEPTUAL PLAN
BEAUMONT DEVELOPMENT PARCEL

EXHIBIT “C”
PURCHASE OPTION AGREEMENT

EXHIBIT “D”
RESPONSIBILITY FOR ANCILLARY PUBLIC IMPROVEMENTS

EXHIBIT “E”
DEVELOPMENT SCHEDULE AND MILESTONES

EXHIBIT “F”
SURVEY OF EASEMENT, ENCROACHMENT,
BOUNDARY IRREGULARITIES AND UTILITY LOCATIONS

EXHIBIT “G”
TEMPORARY CONSTRUCTION AND ACCESS EASEMENT

EXHIBIT “H”

STAGING LOCATIONS

EXHIBIT “I”
PROPERTY USE AGREEMENT

EXHIBIT “J”
INSURANCE REQUIREMENTS

Exhibit “A”

Osceola County Government, Beaumont Complex, according to the map or plat thereof as recorded in Plat Book 12, Page 45, of the Public Records of Osceola County, Florida.

Parcel Id: 21-25-29-1884-0001-0010

LESS AND EXCEPT

A portion of lot 1, Osceola County Government, Beaumont Complex, according to the plat thereof as recorded in plat book 12, pages 45-46, public records of Osceola County, Florida, being more particularly described as follows:

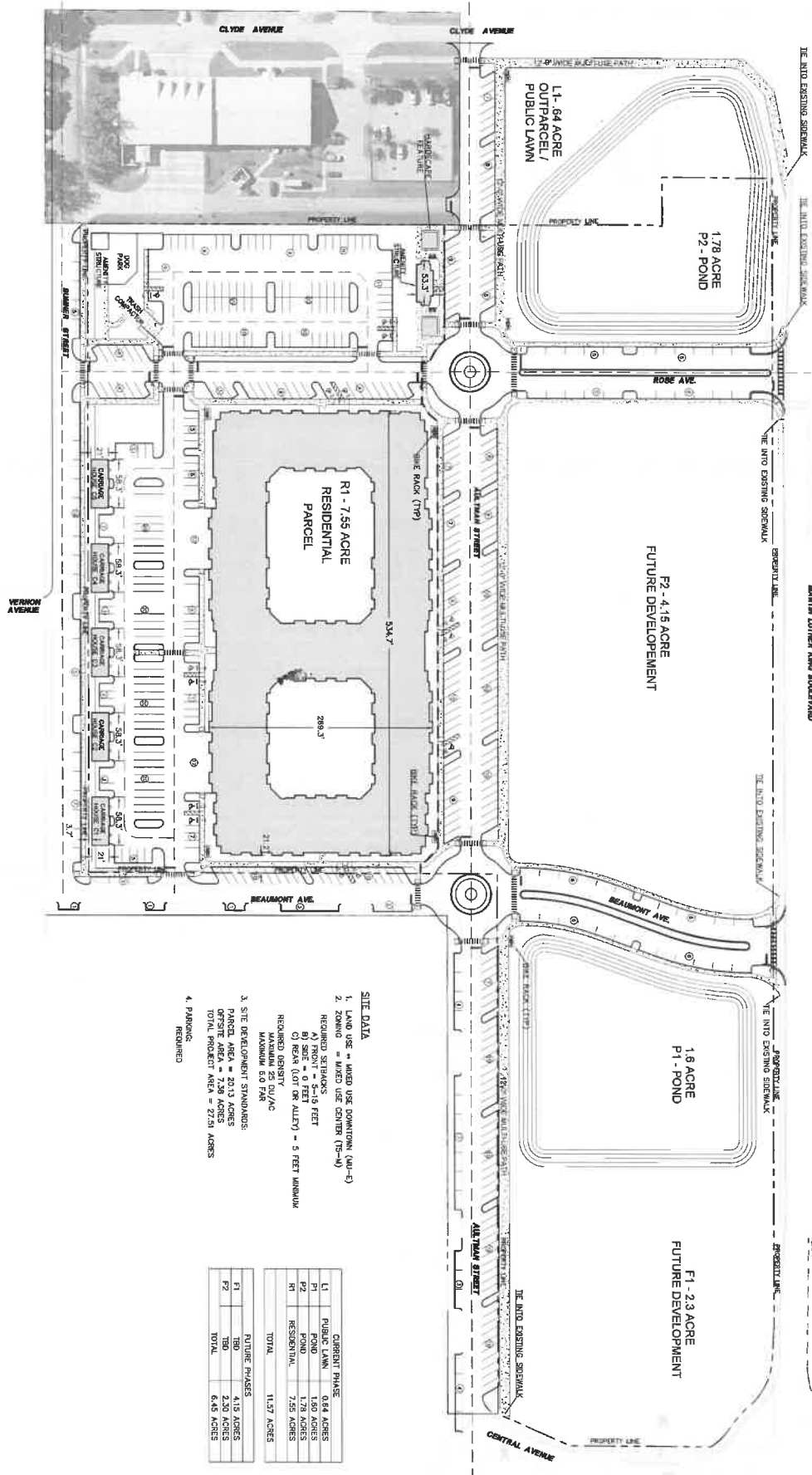
Beginning at the northeast corner of said lot 1, run thence S00°12'09"W, along the west right-of-way line of Central Avenue, a distance of 76.75 feet to a point on a non-tangent curve being concave to the southwest, having a chord bearing of N 44°43'07"W, a chord distance of 323.57 feet, a radius of 79.00 feet, and an included angle of 24°32'06"; thence run along said curve a distance of 33.83 feet to a point of reverse curvature of a curve being concave to the northeast, having a chord bearing of N 48°19'42"W, a chord distance of 33.42 feet, a radius of 111.00 feet, and an included angle of 17°18'55"; thence run along said curve a distance of 33.55 feet to a point of reverse curvature of a curve being concave to the southwest, having a chord bearing of N 63°48'54"W, a chord distance of 64.63 feet, a radius of 79.00 feet, and an included angle of 48°17'19"; thence run along said curve a distance of 66.58 feet to a point of tangency; thence run N 86°58'40"W, a distance of 40.41 feet to a point on the north property line of lot 1, thence run N 89°59'16"E along said line, a distance of 147.20 feet to the point of beginning.

ALSO LESS AND EXCEPT

A parcel of land being a portion of Lot 1, OSCEOLA COUNTY GOVERNMENT BEAUMONT COMPLEX, according to the plat thereof as recorded in Plat Book 12, Pages 45 and 46 of the Public Records of Osceola County, Florida, and being more particularly described as follows:

Being at the Southwest corner of said Lot 1, thence run N00°07'38"W along the East right of way line of Clyde Avenue, a distance of 78.89 feet; thence run N89°51'22"E, a distance of 155.16 feet; thence run N00°03'38"W along the West line of said Lot 1, a distance of 562.10 feet; thence run S89°43'34"W, a distance of 7.41 feet; thence run N00°02'57"W, a distance of 50.60 feet; thence run N89°43'34"E, a distance of 57.40 feet; thence run S00°03'38"E, a distance of 691.53 feet to a point on the North right of way line of Summer Street; thence run S89°48'23"W along said North right of way line, a distance of 205.07 feet to the Point of Beginning.

EXHIBIT B - CONCEPTUAL PLAN BEAUMONT REDEVELOPMENT PARCEL



SITE DATA

1. LAND USE = MIXED USE DOWNTOWN (MU-E)
2. ZONING = MIXED USE CENTER (MU-M)
3. SITE DEVELOPMENT STANDARDS:
 - PARCEL AREA = 20.13 ACRES
 - SETBACK AREA = 12.24 ACRES
 - TOTAL PROJECT AREA = 27.29 ACRES
4. PARKING: REQUIRED

CURRENT PHASE	
L1	PUBLIC LAWN
P1	POND
P2	POND
R1	RESIDENTIAL
TOTAL	
11.57 ACRES	
FUTURE PHASES	
F1	TBD
F2	TBD
TOTAL	
6.45 ACRES	

5. DENSITY:
REQUIRED: 25 DU/ACRE MINIMUM

PURCHASE OPTION AGREEMENT

THIS PURCHASE OPTION AGREEMENT is dated this _____ day of _____, 20__, and constitutes an agreement by which **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida ("City" or "Owner") grants to **SKYVIEW KISSIMMEE DEVELOPER LLC** a Delaware limited liability company ("Skyview"), an exclusive option to purchase the Beaumont Development Parcel as hereinafter defined, the City and Skyview being collectively referred to herein as the Parties.

1. Definitions. The following terms, whenever used in this Purchase Option Agreement (defined below), shall have only the meanings set forth below, unless such meanings are expressly modified elsewhere herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement (defined below).

1.1. Beaumont Development Parcel. The Beaumont Development Parcel is owned by the City and is the subject of this Option Agreement. The Beaumont Development Parcel is more particularly described on **Exhibit "A"** attached hereto.

1.2. Broker. The licensed real estate professional(s) identified in a Purchase Agreement for one or more Option Parcel as the listing broker, selling broker, buyer's broker and/or cooperating broker ("the Broker(s)") for the transaction. Nothing herein shall require that the identity of the Broker(s) be the same for each Purchase Agreement executed pursuant to this Option Agreement.

1.3. Business Day. Any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the state of Florida or is a day on which banking institutions located in Florida are authorized or required by law or other governmental action to close.

1.4. Closing. Closing shall mean the day on which the transfer of title on an Option Parcel shall occur.

1.5. Development Agreement. The Development Agreement between Skyview, the City, and the Kissimmee Downtown Community Redevelopment Agency (the "CRA") dated of even date herewith governing redevelopment of the Beaumont Development Parcel.

1.6. Development Plan. The Development Plan shall have the meaning ascribed to it in Section 4.03 of the Development Agreement.

1.7. Development Rights. The Development Rights are the aggregated densities and intensities of development allowed cumulatively within the Beaumont Development Parcel consistent with the greater of the density anticipated in the Development Plan or the maximum density permitted by City Code.

1.8. Effective Date. The Effective Date shall be the date the last of the City or Skyview executes this Purchase Option Agreement, provided however, if the Development

Agreement has not yet been executed by the City and Skyview, then the Effective Date shall be the date following the execution by the Parties of the Development Agreement.

1.9. Escrow Agent. Old Republic National Title Insurance Company.

1.10. Mutual Release. An acknowledgment of termination of the Option Agreement and a mutual release of rights, claims and actions under this Option Agreement in the form of **Exhibit “B”** attached to this Purchase Option Agreement.

1.11. Net Sales Proceeds. Net Sales Proceeds is the distributable cash payable to the Seller after deducting all allowable expenses from the Purchase Price paid at Closing.

1.12. Notice of Exercise. A notice in the form of **Exhibit “C”** attached to this Purchase Option Agreement and to be utilized by Skyview to apprise the City that Skyview or Skyview’s approved Assignee to acquire a portion of the Beaumont Development Parcel.

1.13. Option Agreement. This Purchase Option Agreement and all Exhibits attached hereto and incorporated herein by reference.

1.14. Option Expiration Date. Unless otherwise terminated pursuant to the provisions of this Purchase Option Agreement or the Development Agreement, the Option Expiration Date shall be the expiration of the Development Agreement.

1.15. Option Parcel. An Option Parcel(s) is a portion of the Beaumont Development Parcel identified by plat and by metes and bounds legal description and which is the subject of a Purchase Agreement.

1.16. Option Period. The period commencing on the Effective Date of this Purchase Option Agreement and ending on the earlier to occur of the exercise or termination of the Purchase Option Agreement as to all Option Parcels.

1.17. Option Property. The Beaumont Development Parcel.

1.18. Outside Closing Date. The Expiration Date as defined in the Development Agreement or such later date as to which the same may be extended pursuant to an express provision of this Option Agreement or a Purchase Agreement executed pursuant to this Option Agreement.

1.19. Owner's Address:

City of Kissimmee
101 Church Street
Kissimmee, FL 34741
Attn: Mike Steigerwald

Copy to: City Attorney
101 Church Street
Kissimmee, FL 34741

1.20. Owner's Current Actual Knowledge. Matters of which Owner's Representative is actually aware, without undertaking any investigation or inquiry whatsoever.

1.21. Purchase Agreement. An agreement entered into between Skyview or Skyview's approved assignee and the City, to acquire an Option Parcel. Said Purchase Agreement shall be substantially in accordance with the form attached to this Purchase Option Agreement as **Exhibit "D"** inclusive of exhibits attached to such Purchase Agreement and incorporated therein by reference.

1.22. Purchase Period. The period commencing upon the proffer of the Notice of Exercise pursuant to this Option Agreement and ending on the earlier to occur of (a) the Closing on the portion of the Skyview Site subject to the Purchase Agreement or (b) termination of the applicable Purchase Agreement by either party as herein provided or as provided in the Development Agreement.

1.23. Purchase Price. Purchase Price for all or any portion of the Beaumont Development Parcel shall be determined as set forth in Section 9 of this Purchase Option Agreement.

1.24. Purchaser. Skyview or an Affiliate of Skyview as defined by the Development Agreement between the City and Skyview, or an approved assignee of Skyview.

1.25. Required Deliverables. All plans, specifications, drawings, inspections, reports, proposals/applications, permits and related documents, maps, and all other documents and things related to the Beaumont Development Parcel.

1.26. Skyview's Address: Skyview Option Price

Skyview Kissimmee Developer LLC
330 N Beaumont Ave.
Kissimmee, FL 34741

1.27. Skyview Option Price. The price to be paid by Skyview, an Affiliate of Skyview, or an approved assignee of Skyview, for particular Option Parcel(s) that are subject to Skyview Option pricing as determined in Section 9 of this Purchase Option Agreement.

1.28. Skyview's Termination Notice. A notice in the form of **Exhibit "E"** attached to this Purchase Option Agreement.

1.29. Termination of Purchase Agreement. A Mutual Release in the form of **Exhibit "B"** delivered to City with regard to a Purchase Agreement executed for one or more Option Parcel(s).

1.30. Title Agent:

Fletcher Fischer Pollack, P.L.
433 Central Avenue 4th Floor
St. Petersburg, Florida 33701
As agent for Old Republic National Title Company.

1.31. Title Commitment. A Commitment for Title Insurance issued by Title Agent on a Title Insurance Company licensed to do business in the State of Florida for any Option Parcel that is subject to a Purchase Agreement.

2. Incorporation of Development Agreement. The Development Agreement as defined in Section 1.8 shall be deemed to and is incorporated into this Purchase Option Agreement as fully as if set forth herein.

3. Grant of Option. City hereby grants to Skyview, an exclusive option (“Option”) to purchase the Beaumont Development Parcel together with the Development Rights attributable to the Beaumont Development Parcel and necessary to develop the same in accordance with the Development Plan described in Section 4.03 of the Development Agreement upon the terms and conditions set forth in this Purchase Option Agreement.

4. Option Consideration. The consideration for this Purchase Option Agreement is \$10.00 together with other good and valuable consideration including the entering into and agreeing to be bound to the terms and conditions set forth in the Development Agreement and completion of the proposed development improvements described in the Development Agreement.

5. Conditions Precedent to Exercise of Option. The Option may be exercised any number of times during the Term of this Agreement as to portions of the Option Property (Option Parcels). Prior to each exercise of the Option, Skyview shall have fulfilled the following conditions precedent:

5.1. No Default under the Development Agreement, City Code or this Agreement. Skyview must not be in default under the Development Agreement, the City Code, or this Purchase Option Agreement. Execution of a Purchase Agreement by the City shall conclusively determine that no default exists.

5.2 Proffer of Purchase Agreement. Skyview or an Affiliate or an Assignee shall have proffered a Purchase Agreement in the form set forth in **Exhibit “D”** and a verifiable list of Development Rights proposed to be utilized in the development of the Option Parcel(s) that conform to the Minimum Development Program described in Section 2.20 of the Development Agreement. Any material deviation from the form of the Purchase Agreement as set forth in **Exhibit “D”** hereto must be accepted by the City.

6. Exercise of Option. Subject to satisfaction of the conditions precedent to exercising the Option set forth herein, the Option may only be exercised by Optionee by delivering to City at any time during the Option Period (1) a fully completed, executed and dated original Notice of Exercise and (2) all other documents and things required under this Option Agreement. The Option may be exercised for any Option Parcel or Parcels. Upon the due and timely exercise of the Option as provided in this Purchase Option Agreement, the provisions of the **Exhibit “D-1”** shall become binding on the Owner and Optionee or Optionee’s approved assignee. The Notice of Exercise shall contain the legal description of the Option Parcel or Parcels. In addition, it shall include the acreage involved, the land use, number and type of units or square footage

attributable to the Option Parcel or Parcels together with an ALTA boundary survey of each such Option Parcel certified to Skyview, or the approved Assignee, if any, and the City, and the Title Insurance Company and a fully executed Purchase Agreement in the form attached as **Exhibit “D”**. The Optionee shall be responsible for all costs of preparation of the Notice and Survey, and Title Insurance.

7. City's Approval Of Notice Of Exercise. The City shall review each Notice of Exercise with Skyview's executed Purchase Option Agreement, and within twenty (20) days after delivery of said Notice of Exercise, the City shall respond to Skyview in writing with its approval, waiver or rejection of the Notice of Exercise. When all conditions precedent as set forth in Section 5 above are deemed satisfied after reasonable review by the City or the City has determined to waive one or more of the conditions precedent, then the City will accept the Notice of Exercise by executing the same in the space provided and by executing the Purchase Agreement tendered with the Notice of Exercise and returning signed originals of the Purchase Agreement to Skyview as appropriate. At such point as the City accepts the Notice of Exercise, the Parties hereto shall proceed to consummate the sale and purchase of the Option Parcel(s) in accordance with the terms and conditions set forth in the Purchase Agreement, it being understood that by entering into this Purchase Option Agreement, the exercise of this Option and assuming that Skyview or an approved assignee has executed the Purchase Agreement set forth in **Exhibit “D”** attached without material change, no further action or approval by the City is required except as hereinafter set forth.

Upon rejection of a Notice of Exercise, the City shall provide Skyview, as appropriate, with a definitive explanation of Skyview's failure to comply with the terms of this Purchase Option Agreement, the Development Agreement, the City Code or the inadequacy of the Notice of Exercise and the accompanying Purchase Agreement together with the corrective action needed so that the City can approve the Notice of Exercise as described above.

It is recognized, understood and agreed that Skyview will from time to time exercise its right to take down an Option Parcel(s) under this Purchase Option Agreement and that in doing so, it will of necessity have either a financing contingency or a due diligence review that once completed may result in an inability of Skyview to consummate the acquisition contemplated by the Notice of Exercise. If and when such event occurs, it is agreed that Skyview has the right to terminate the Purchase Agreement for any Option Parcel(s) entered into pursuant to the Notice of Exercise without any liability to the City except to return the land and Development Rights that were the subject of the Notice of Exercise to the inventory of Option Parcel(s) and such land and associated Development Rights shall thereafter be available for Skyview to again exercise its Option as to the same at any time during the Option Period. Notwithstanding the foregoing, Skyview must advise and inform the City of its intention to terminate a Purchase Agreement as soon as practicable after the fact is known and no event beyond the termination of the due diligence period under the Purchase Agreement.

8. Omitted.

9. Purchase Price For Option Parcel(s)

Phase 1 – Approximately 7.25 acres – \$1,450,000.00

Phase 2 – Approximately 4.15 Acres – \$830,000.00

Phase 3 – Approximately 2.30 Acres – \$460,000.00

10. Deposits. If Skyview or an Affiliate of Skyview is acquiring an Option Parcel(s), no deposit shall be required. If an unaffiliated approved assignee of Skyview is acquiring an Option Parcel, a deposit equal to 10% of purchase price shall be required, to be held in escrow by the Escrow Agent, unless a lesser amount is accepted by the City. The Deposit shall be nonrefundable after the end of the due diligence period and in the event the assignee fails to close, shall be delivered to the City.

11. Closing on Option Parcel(s). If Skyview duly and timely exercises the Option, the Skyview Option Price shall be due and payable at Closing.

12. Option Terminated by Skyview. If Skyview duly and timely terminates this Purchase Option Agreement as provided for herein on or before the Option Expiration Date, the City shall promptly deliver to Skyview one (1) copy of the Mutual Release, fully completed, originally executed and dated by City.

13. Option Neither Exercised Nor Terminated. If Skyview fails to timely exercise its right to acquire any or all of the Option Property, this Purchase Option Agreement shall terminate automatically upon the termination of the Development Agreement. After termination of the Purchase Option Agreement, Skyview shall promptly deliver to City one (1) counterpart of the Mutual Release, fully completed, executed and dated by Skyview. Upon City's receipt of such Mutual Release, City shall promptly deliver to Skyview one (1) copy of such Mutual Release, fully completed, originally executed and dated by City.

14. Entry, Inspection and Testing. If the Option is exercised pursuant to this Purchase Option Agreement, then as to any Option Parcel(s), Skyview, its Affiliate or approved assignee and its agents may enter upon the Option Parcel(s) at reasonable times to perform reasonably necessary inspections and tests. Notwithstanding the foregoing, neither Skyview, its Affiliate or approved assignee, nor its agents, shall have any right to make soils borings, drill testing or monitoring wells or otherwise to penetrate the surface of the Option Parcel(s) without City's prior written consent, which consent will not be unreasonably withheld. Skyview, its Affiliate or approved assignee, and its agents, shall exercise due care in entering upon, inspecting and testing the Option Parcel(s) and shall perform all such entry, inspection and testing in a professional manner so as to minimize any damage to or disruption of the Option Parcel(s). The party seeking to enter the land shall obtain or cause to be obtained at such party's sole cost and expense, any licenses or permits required by federal, state or local law in order to perform such inspections and tests. The party conducting the investigation shall promptly repair any damage to the Option Parcel(s) resulting from such entry, inspection or testing and shall return the Option Parcel(s) as nearly as possible to their condition prior to such entry, inspection or testing.

15. Environmental Disclosure. Skyview acknowledges that it has been advised by the City that some portion of the Beaumont Development Parcel has been remediated for presence of Hazardous Materials. Skyview shall have no obligation to undertake any environmental remediation of Hazardous Materials on the Beaumont Development Parcel if, (i) such Hazardous Materials existed on the Beaumont Development Parcel prior to the Commencement Date and Skyview has not caused, permitted, contributed to or exacerbated the presence of such Hazardous Materials; or (ii) such Hazardous Materials have migrated onto the Skyview Site from an off-site source without Skyview's knowledge and Skyview has not caused, contributed to or exacerbated the presence of such Hazardous Materials. Without limiting the generality of the foregoing, Skyview shall have no obligation to remediate or take any action with regard to the Hazardous Materials identified in the Development Agreement and Skyview is entitled to rely on the determination of the Florida Department of Environmental Protection that no further action is required to address asbestos in the buildings to be demolished on the Beaumont Development Parcel.

Nothing contained herein shall obviate the duty of Skyview or any Affiliate of Skyview, or an approved assignee in purchasing an Option Parcel(s) to undertake such due diligence as is required to qualify Skyview or an approved assignee as a Bona Fide Prospective Purchaser ("BFPP") so as to meet the criteria set forth in 42 USC 9601(40) and 42 USC 9607(r) of CERCLA. An election to purchase after having made "all appropriate inquiry" shall not operate as a discharge of the City's duty to remediate but shall bar any claim against the City by reason of the election to purchase by Skyview or an approved assignee and both Skyview and any approved assignee shall consummate the transaction contemplated acting solely in reliance upon their own environmental investigation. All investigations undertaken by Skyview or any approved assignee shall meet the review standard set forth in ASTM Standard 1527-05

16. Owner's Deliverables to Skyview.

16.1 Items Delivered.

(a) **General Items.** Not more than fifteen (15) Business Days after the Effective Date of the Purchase Option Agreement, it is acknowledged that Owner has or will have delivered to Skyview the following items relating to the Beaumont Development Parcel:

(i) **Contracts.** A copy of each unrecorded contract, lease and or agreement, if any, contained in Owner's files for the Beaumont Development Parcel, which directly concerns and expressly refers to the Option Property or any portion thereof;

(ii) **Title Documents.** A copy of all documents related to Title of the Beaumont Development Parcel in possession of the Owner;

(iii) **Environmental Reports.** Copies of any environmental reports related to the Beaumont Development Parcel in possession of the Owner and identified in the Development Agreement;

(iv) **Survey.** A copy of any surveys related to the Beaumont Development Parcel in possession of the Owner;

(v) **Plans and Specifications:** Copies of plans and specifications of all structures and facilities currently located on the Beaumont Development Parcel together with copies of maps showing the locations of existing utilities serving the Beaumont Development Parcel to the extent available; and

(vi) **Geotechnical Report:** Copies, if any, of all geotechnical reports that pertain to the Beaumont Development Parcel;

(b) **Additional Deliverables.** Throughout the Option Period, City shall also deliver to Skyview copies of such other items relating to the Beaumont Development Parcel as City is required to deliver to Skyview under applicable law and as such items may become available in the due course of business during the Option Period.

16.2 Limited Warranty. City warrants and represents to Skyview that, to Owner's current actual knowledge at the time of delivery, all copies of documents, instruments, reports, correspondence and other writings delivered by City to Skyview are true and correct copies of the originals. Skyview acknowledges that the delivery of any and all such writings to Skyview in accordance herewith shall not be deemed a representation or warranty as to the completeness or accuracy thereof and Skyview shall make such further investigation of the content of same as Skyview shall determine is required in order for Skyview to file and process a Notice of Exercise in order to take down and acquire a portion of the Skyview Site or an Option Parcel(s). Any claim based on an alleged breach of the foregoing limited warranty and representation must be made by Skyview in a writing delivered to City no later than ninety (90) days after the Closing or be forever barred. A breach of the foregoing limited warranty and representation shall not entitle Skyview to rescind this Option Agreement, or Skyview's purchase of the any portion of the Skyview Site, if consummated, but instead shall only entitle Skyview to recover actual monetary damages. **EXCEPT AS SET FORTH IN THIS SECTION, OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY ITEM DELIVERED BY OWNER TO SKYVIEW PURSUANT TO SECTION 16 OF THIS PURCHASE OPTION AGREEMENT.**

17. Indemnities.

17.1 Liability for Brokerage Commissions. The City has not employed the services of a Broker to procure this Purchase Option Agreement. Nor will the City employ the services of a Broker to facilitate the sale of the Option Property or any portion thereof to Skyview or an affiliate of Skyview. Accordingly, Skyview hereby agrees to defend, indemnify, and hold harmless City from and against any claims by third parties, including real estate brokers for brokerage, commission, finder's or other fees relative to this Purchase Option Agreement, the Purchase Agreement for the sale of the property to Skyview, an Affiliate of Skyview or an

approved assignee including any court costs, attorneys' fees or other costs or expenses arising there from, and alleged to be due by authorization of the indemnifying party unless specifically outlined in the Purchase Agreement. Notwithstanding the foregoing Skyview and the City recognize and agree that unless one or the other of them specifically contract to pay a Brokerage Commission, then neither the City nor Skyview shall be liable for same.

17.2 Meaning. For purposes of this Section 17, all references to "Skyview" when Skyview is indemnifying the City against a claim, shall include: (1) the Skyview's parent, subsidiary, and Affiliate corporate entities, (b) Skyview's directors, officers, shareholders, employees, and agents, and (c) the successors, and assigns of the Skyview, and the Skyview's directors, officers, shareholders, employees, and agents.

17.3 Effectiveness. The provisions of this Section 17 shall be effective upon full execution of this Purchase Option Agreement and shall survive the closing or the termination of this Purchase Option Agreement.

18. Fees and Charges. If after delivery of Notice of Exercise, Skyview fails to close, Skyview shall be obligated to pay all fees and charges owing to Title or Escrow Agent in connection with or in any way related to this Purchase Option Agreement or the transactions contemplated hereby and City shall have no obligation or liability whatsoever in connection therewith. If a deposit has been delivered pursuant to Section 10, then all fees and charges owing to Title or Escrow Agent in connection with, or in any way related to, the purchase of the Option Parcel(s) contemplated in the executed Purchase Agreement shall be paid in accordance with the provisions of the Purchase Agreement.

19. Brokerage Commissions. Upon purchase of an Option Parcel(s) by Skyview pursuant to a Purchase Agreement as set forth herein, it is understood and agreed that the City shall not pay a fee or commission to Skyview as a Broker(s) or to an unrelated Broker(s). City hereby warrants and represents to Skyview that City has not dealt with any Broker, finder or other agent in connection with the transaction contemplated by this Purchase Option Agreement or such subsequent transactions contemplated by this Purchase Option Agreement. Skyview hereby warrants and represents to City that, Skyview has not dealt with any Broker, finder or other agent in connection with the transactions contemplated hereby. Skyview shall at the request of the City provide a Broker Release in substantially the form as set forth in **Exhibit "F"**. In no event will the City pay a brokerage fee or commission.

20. Obligation to Commence Construction Within Twelve Months. It is recognized, understood and agreed that neither Party to this Purchase Option Agreement desires that Parties speculate or land bank one or more of the Option Parcel(s) and accordingly, all Purchase Agreements executed hereunder, including subsequent Purchase Agreements between Skyview or an Affiliate of Skyview, or an approved assignee shall include a requirement that construction commence on the acquired Option Parcel(s) within twelve (12) months of Closing.

For purposes of this Purchase Option Agreement, "Commencement of Construction" shall mean the earliest to occur of payment of impact fees or application for a building permit for vertical construction together with any other required permits necessary to develop the

Option Parcel(s) with the use(s) set forth in the Notice of Exercise and that at a minimum, the site clearing work on the Option Parcel(s) will have been commenced. The twelve (12) month requirement shall be subject to a reasonable extension based upon a written mutual agreement or acts of Force Majeure. For an extension to be reasonable, the Party requesting the same must demonstrate that there has been significant effort to process appropriate permit applications and the like in order to commence construction.

Each Purchase Agreement shall contain a reconveyance provision which can be exercised at the sole discretion of the City if the required Commencement of Construction has not occurred and which provides for reconveyance of the Option Parcel(s) to the City for seventy-five percent (75%) of Purchase Price less City's closing costs shown on the Closing Statement for purchase of the Option Parcel ("Reconveyance Amount"). At Closing on an option parcel, a deed of reconveyance from the party acquiring the Option Parcel(s) to the City shall be delivered to the Escrow Agent to hold until the party acquiring the Option Parcel(s) provides evidence to the City of satisfaction of the construction requirement. The City shall then notify the Escrow Agent in the manner set forth in the Purchase Agreement that the construction requirement has been satisfied and the Escrow Agent shall thereafter mark the deed as CANCELLED and return the escrowed deed to the Owner of the Option Parcel(s). If the City has determined that construction has not commenced, and after the Purchaser is provided sixty (60) days notice and an opportunity to provide evidence that construction has commenced and has failed to do so to the satisfaction of the City, then the City may at its discretion advise the Escrow Agent that the construction requirement has not been satisfied, deliver the Reconveyance Amount to the Escrow Agent to be distributed to the lienholder of any outstanding mortgage or lien of record, or if no lienholder exists or a portion of the Reconveyance Amount remains after satisfaction of all outstanding liens, to be distributed to the party reconveying the parcel. Upon receipt of the Reconveyance Amount, the Escrow Agent shall, at the direction of the City, proceed to record the reconveyance deed in the Public Records of Osceola County, Florida, together with any applicable mortgage and lien satisfactions. The City acknowledges that the Reconveyance Amount may be insufficient to satisfy outstanding liens against the Property, and the Option Parcel may therefore be reconveyed to the City subject to such liens.

21. General Provisions.

21.01 Successors and Assigns. This Purchase Option Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding the foregoing, Skyview may not transfer, assign or encumber through lien, mortgage or otherwise Skyview's rights under this Purchase Option Agreement except as to specific Option Parcel(s) and as otherwise contemplated in the Development Agreement. In the event of any assignment by Skyview, the assignee shall be and become the person or entity having the right or obligation to (a) deliver or receive notices and documents, (b) give approvals, (c) waive conditions, (d) make demands, (e) receive refunds, and (f) if the Option is exercised, be the grantee or transferee under the Deed (as defined in Exhibit "D"), and the FIRPTA Certificate and the General Assignment (as defined in Exhibit "D") all as may be permitted or required by this Purchase Option Agreement and not then already accomplished by Skyview. In addition, the assignee shall be deemed to have assumed all obligations and liabilities of Skyview under this Purchase

Option Agreement as to the Option Parcel(s). Notwithstanding the forgoing no assignment shall relieve Skyview of any of its obligations or liabilities with regard to the remaining Option Property under this Purchase Option Agreement. Any such assignment must be signed by such assignee and must contain the assignee's assumption of Skyview's liabilities and obligations hereunder. Skyview shall deliver to City a complete copy of any such assignment for City's approval based on assignees identity five (5) days prior to the effective date of such assignment. In the event an assignee has executed a Purchase Contract with the consent of Skyview, Skyview shall at closing execute a release of the Option as to the Option Parcel(s) being purchased by such assignee.

21.02 Entire Agreement. This Purchase Option Agreement, including the referenced provisions of the Development Agreement, the City Code, and the Purchase Agreement, contains the entire agreement between the parties concerning same, and supersedes all prior written or oral agreements between the Parties to this Purchase Option Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both City and Skyview.

22.03 Time of Essence. City and Skyview hereby acknowledge and agree that time is strictly of the essence with respect to each term and condition of this Purchase Option Agreement and that the failure to timely perform any of the terms and conditions by either party shall constitute a breach and default under this Purchase Option Agreement by the party failing to so perform.

22.04 Partial Invalidity. If any portion of this Purchase Option Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Purchase Option Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Purchase Option Agreement.

22.05 Governing Law. The Parties intend and agree that this Purchase Option Agreement shall be governed by and construed in accordance with the laws of the state of Florida and that venue for the adjudication of any matter arising under the same shall vest and be in Osceola County, Florida.

22.06 Attorneys' Fees. Each party waives the right to attorney fees and costs for enforcement of this Purchase Option Agreement, including any legal actions or appeal.

22.07 No Third Parties Benefitted. No person other than City and Skyview, and their authorized and permitted successors and assigns, shall have any right of action under this Purchase Option Agreement.

22.08 Waivers. No waiver by either Party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either Party of the same or any other provision.

22.09 Captions. The captions and Section numbers of this Purchase Option Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Purchase Option Agreement.

22.10 Counterparts. To facilitate execution, this Purchase Option Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the Parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

22.11 Payments. Any payments required or permitted to be made by Skyview to City under this Purchase Option Agreement (including, without limitation, payment of the Option Price, Purchase Price or any other amount specified in this Purchase Option Agreement) shall be in the form of cash, a cashier's check, bank checks acceptable to City or a federal funds wire transfer pursuant to instructions delivered by the City to the Skyview at the time of Closing.

22.12 Time Zone. Every reference in this Purchase Option Agreement to a time of day shall be deemed to be a reference to the time of day in Kissimmee, Florida.

22.13 No Presumption. All the Parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Purchase Option Agreement, the Purchase Agreement and all documents attached as exhibits to either. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Purchase Option Agreement would be construed or interpreted against the party causing the document to be drafted.

22.14 Notices. Any notices or other communication required or permitted under this Purchase Option Agreement shall be in writing, and shall be (a) personally delivered, or sent by certified or registered United States mail, postage prepaid, return receipt requested, to the address of the Party set forth in of this Purchase Option Agreement or (b) emailed with confirmed receipt to the email address of the party set forth in this Purchase Option Agreement. Such notice or communication shall be deemed given when delivered in person, when the emailed is received or, in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

22.15 The Owner's Cooperation On General Title Matters. The City shall cooperate with Skyview acquiring the Purchase Option Property or any portion of the same regarding title matters.

22.16 Exhibits. Exhibits "A" – "F" attached to this Purchase Option Agreement and any sub-exhibits associated therewith are hereby incorporated by this reference.

IN WITNESS WHEREOF, SKYVIEW has executed this Purchase Option Agreement on the date set forth below.

DATED: _____, 2021

WITNESS:

**SKYVIEW KISSIMMEE DEVELOPER,
LLC:**

By: _____

By: _____

Print Name: _____

Print Name: _____

By: _____

Title: _____

Print Name: _____

IN WITNESS WHEREOF, City has executed this Purchase Option Agreement on the date set forth below:

DATED: August ____, 2021

ATTEST

CITY OF KISSIMMEE

By: _____
City Clerk

By: _____
Mayor/Mayor Protem

Print Name: _____

Print Name : _____

Approved as to form and legality for the use
and reliance of the City of Kissimmee, Florida,
only.

By: _____
City Attorney

EXHIBITS LIST

EXHIBIT A	BEAUMONT DEVELOPMENT PARCEL LEGAL DESCRIPTION
EXHIBIT B	ACKNOWLEDGMENT AND MUTUAL RELEASE
EXHIBIT C	NOTICE OF EXERCISE
EXHIBIT D	PURCHASE AGREEMENT (FIRPTA, DEED)
EXHIBIT E	NOTICE OF TERMINATION
EXHIBIT F	BROKER RELEASE

EXHIBIT "A"
LEGAL DESCRIPTION OF BEAUMONT DEVELOPMENT PARCEL

EXHIBIT "B"

ACKNOWLEDGMENT AND MUTUAL RELEASE

This **ACKNOWLEDGMENT AND MUTUAL RELEASE** ("Release") is entered into as of the dates written below by and between the undersigned "Owner/Seller" and the undersigned "Skyview/Buyer".

R E C I T A L S:

This Release is made and entered into on the basis of the following facts and understandings of the parties hereto.

A. Owner/Seller and Skyview/Buyer entered into that certain Option Agreement dated _____, 20__, whereby Skyview was granted an option ("Option") to purchase the Property (as defined in the Option Agreement).

B. Owner/Seller and Skyview/Buyer desire to acknowledge the termination of the Option and Option Agreement as herein provided, and to enter into a mutual release as herein provided.

A G R E E M E N T:

IN CONSIDERATION of the mutual agreements herein contained, Owner/Seller and Skyview/Buyer (a) acknowledge that the Option has been terminated in accordance with the terms of the Option Agreement or (b) that all Purchase and Sale Agreements executed pursuant to the Option Agreement have been terminated in accordance with the terms of Section 14, (c) all funds due to each Party pursuant to the Development Agreement have been paid; and (d) fully release and discharge each other from, and relinquish all rights, claims and actions that each may have against the other and which arise under or are in any way connected with the Option Agreement, Option Property, except as specifically provided herein to the contrary.

To the extent permitted by the laws of the State of Florida, this Release applies to all described rights, claims and actions, whether known or unknown, foreseen or unforeseen, present or future.

For purposes of this Release, all references to "Owner/Seller" or "Skyview/Buyer" when such Party is being released of an obligation or claim, but not as to such party when it is releasing the other Party of an obligation or claim, shall include (a) its parent, subsidiary or affiliate corporations, (b) its directors, officers, shareholders, employees and agents, and (c) its heirs, successors, personal representatives and assigns and those of its directors, officers, shareholders, employees and agents.

Notwithstanding anything herein to the contrary, this Release shall not extend to any present or future rights, claims or actions which Owner/Seller or Skyview/Buyer may have against

the other under or arising out of the provisions of Section 17 of the Option Agreement entitled "Indemnities" and Section 12 of the Development Agreement entitled "Indemnity."

This Release shall be of no force or effect unless and until it or a copy of it has been executed and dated by all Parties and all deliverables required to be made under the Option Agreement after termination have been made.

This Release shall be governed by and construed in accordance with the laws of the state of Florida.

If any lawsuit is filed which relates to or arises out of this Release, each party waives the right to attorney fees and costs for enforcement of this Agreement, including any legal actions or appeal.

OWNER/SELLER:

ATTEST

CITY OF KISSIMMEE

By: _____
City Clerk

By: _____
Mayor/Mayor Protem

Print Name: _____

Print Name: _____

Approved as to form and legality for the use and
reliance of the City of Kissimmee, Florida,
only.

By: _____
City Attorney

SKYVIEW/BUYER:

**SKYVIEW KISSIMMEE DEVELOPER,
LLC**

By: _____

Print Name: _____

Title: _____

Dated: _____

EXHIBIT "C"

NOTICE OF EXERCISE

_____, 20__

City of Kissimmee

[Owner's Address]

[Owner's Address]

[Owner's Address]

Re: Exercise of Option to Purchase

Dear _____:

The undersigned hereby exercises the Option as to the Option Parcel(s) described in **Exhibit B-1** hereto as set forth in that Purchase Option Agreement dated as of _____, 2021, between the undersigned, as "Optionee", and the City of Kissimmee, as "Owner". **Exhibit B-2** hereto identifies the Option Parcel(s) being acquired.

This letter shall constitute the Notice of Exercise referred to in the Option Agreement.

Very truly yours,

SKYVIEW KISSIMMEE DEVELOPER, LLC

By: _____

Title: _____

Print Name: _____

EXHIBIT “D”

PURCHASE AGREEMENT

This **PURCHASE AGREEMENT** is made and entered into this ____ day of _____ 20__ between City as Owner ("Seller") and **SKYVIEW KISSIMMEE DEVELOPER, LLC** or _____, as assignee of Skyview ("Buyer") pursuant to that certain Notice of Exercise accompanying this Purchase Agreement and proffered to the City consistent with the terms and conditions of the Purchase Option Agreement between SKYVIEW and the City dated _____, 2021.

R E C I T A L S

This Purchase Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto:

A. Seller selected **SKYVIEW KISSIMMEE DEVELOPER, LLC** as Seller's developer in the redevelopment of the Beaumont Development Parcel.

B. Buyer has been given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue which might influence Buyer's decision to purchase the Property described in the "Notice of Exercise" from Buyer.

AGREEMENT

1. The following terms, whenever used in this Purchase Agreement, shall have the meanings set forth below. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Option Agreement or the Development Agreement.

1.1. Assignee of Buyer. The Party named in **Exhibit “D-2”** attached to this Purchase Agreement, if any.

1.2. Buyer's Termination Notice: A notice in the form of **Exhibit “E”** to the Purchase Option Agreement.

1.3. Deed: A special warranty deed in the form of **Exhibit “D-4”** attached to this Purchase Agreement.

1.4. Effective Date. _____ (insert date of Skyview's Notice of Exercise).

1.5. Escrow: The escrow to be established by Buyer with Escrow Agent pursuant to Section 6 below.

1.6. FIRPTA Certificate: A certificate in the form of **Exhibit “D-5”** attached to this Purchase Agreement.

1.7. General Assignment: A general assignment in the form of **Exhibit “D-6”** attached to this Purchase Agreement.

1.8. Hazardous Materials: Oil and other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under any past, present or future state or federal law, ordinance or regulation.

1.9. Hazardous Materials Laws: All statutes, ordinances, rules and regulations relating to Hazardous Materials, including, without limitation, those relating to soil and groundwater conditions.

1.10. New Title Exception: An exception to title to the real property which arises after the proffered Notice of Exercise of the Option due to the acts or omissions (whenever occurring) of a person or entity other than Buyer, and Buyer's agents and employees, without Buyer's prior written approval, and which (a) will materially interfere with Buyer's proposed use of the Real Property after Closing or (b) constitutes a lien or other monetary encumbrance upon the Real Property.

1.11. Owner Policy: An ALTA Owner's Policy of Title Insurance issued by Title Agent, in form and substance as provided in Section 5.4(e) of this Purchase Agreement.

1.12. Outside Contract Closing Date: (insert date) Date shall not be later than 120 days following the Effective Date unless otherwise agree to by the Parties.

1.13. Permitted Exceptions: The following exceptions to and exclusions from coverage under the Owner Policy: (a) all exceptions and exclusions to title set forth in or required under the terms of the Title Commitment; (b) all other exceptions to title which are not New Title Exceptions; and (c) all New Title Exceptions which are approved by Buyer pursuant to Section 4.1 of this Purchase Agreement.

1.14. Property: The Personal Property and the Real Property.

(a) **Personal Property:** The personal property described in the General Assignment.

(b) **Real Property:** The real property described in **Exhibit “D-1”** attached to this Purchase Agreement, and all easements, rights of way and other rights appurtenant thereto.

1.15. Reconveyance Deed. A Deed in the form of **Exhibit “D-3”**.

1.16. Seller's Current Actual Knowledge: Matters of which Seller's Representative is actually aware, without undertaking any investigation or inquiry whatsoever.

1.17. Seller's Representative: City of Kissimmee
101 Church Street
Kissimmee, FL 34741
Attn: Mike Steigerwald

1.18. Title Agent: Fletcher Fischer Pollack, P.L.
433 Central Avenue 4th Floor
St. Petersburg, Florida 33701

2. Purchase and Sale

2.1 Assignment of Option. If an Assignment of the Option as to an Option Parcel(s) is occurring pursuant to Section 21 of the Purchase Option Agreement, the Assignee of Buyer shall have all obligations of Buyer hereunder.

2.2 Purchase and Sale. Seller agrees to sell the Property and all associated development rights to Buyer and Buyer agrees to purchase the Property from Seller on the terms and conditions set forth herein. In consideration of Seller's sale of the Property to Buyer, Buyer shall (a) pay to Seller the Purchase Price and (b) perform all of Buyer's other obligations hereunder.

2.3 Payment of Purchase Price. Buyer shall pay the Purchase Price as follows: (a) Buyer shall pay in cash to Seller at Closing the sum of \$_____. Purchase Price shall be paid all cash to Seller at Closing (including the Option Price). If a deposit has been provided pursuant to Section 10 of the Purchase Option Agreement, the deposit shall be applied to the purchase price.

2.4 Termination: Buyer may revoke its Notice of Exercise hereunder and terminate this Purchase Agreement at Buyer's discretion, provided, however, if a deposit has been paid, the Seller shall be entitled to retain the deposit. Upon Termination, the Option as to the real property described in **Exhibit "D-1"** shall remain in full force as if no Notice of Exercise had been delivered as to the Option Parcel(s).

3. Inspection and Due Diligence Period. Buyer shall have ninety (90) days from the date of execution of this Agreement to complete inspection and due diligence activities pursuant to Section 14 of the Purchase Option Agreement (the "Inspection Period"). Any objections to be raised by the Buyer that would preclude its closing on the contemplated transaction shall be identified to the Seller before the expiration of the Inspection Period, otherwise the Buyer is bound to close as otherwise provided for herein.

4. Acknowledgments

4.1 Buyer's Acknowledgments. Buyer acknowledges that Buyer is purchasing the property solely in reliance on Buyer's own investigation. Buyer expressly acknowledges that, in

consideration of the agreement of Seller herein, and except as otherwise specified herein, Seller makes and has made no representations or warranties, express or implied, or arising by operation of law, including, but not limited to, any warranty as to condition, merchantability or fitness for a particular use or purpose, with respect to the property or any matter related thereto. Notwithstanding the foregoing, nothing herein shall limit the obligations of the City under the Development Agreement, including without limitation the obligations set forth in **Exhibit “K”** of the Development Agreement.

Further, nothing contained herein shall obviate the duty of Buyer, in purchasing an Option Parcel(s) to undertake such due diligence as is required to qualify Buyer as a Bona Fide Prospective Purchaser (“BFPP”) so as to meet the criteria set forth in 42 USC 9601(40) and 42 USC 9607(r) of CERCLA. An election to purchase after having made “all appropriate inquiry” shall not operate as a discharge of the City’s duty to remediate as otherwise provided under applicable law but shall bar any claim against the City by reason of the election to purchase by Buyer and Buyer shall consummate the transaction contemplated here acting solely in reliance upon its own environmental investigation. All investigations undertaken by Buyer or any Affiliate of Buyer shall meet the review protocols set forth in ASTM Standard 1527-05.

5. New Title Exceptions

5.1 Buyer's Notice. Buyer shall have the right and option to deliver to Seller a written notice ("New Title Exception Notice"), at any time during Inspection and Due Diligence Period, but not more than ten (10) days after Buyer's discovery of any New Title Exception, stating that a New Title Exception has arisen and that such New Title Exception is unacceptable to Buyer. If Buyer timely delivers a New Title Exception Notice to Seller, the following provisions shall apply:

(a) Correction Efforts.

(i) Seller's Responsibility. If the New Title Exception is due to the acts or omissions of Seller, Seller shall use its best efforts to (A) remove or correct the New Title Exception to Buyer's reasonable satisfaction at or prior to Closing or (B) cause the issuance by Title Agent, at Closing, of title insurance over or with respect to the New Title Exception, all at Seller's sole cost and expense.

(ii) Not Seller's Responsibility. If the New Title Exception is not due to the acts or omissions of Seller, then, upon Buyer's delivery to Seller of the New Title Exception Notice, Seller may, but shall not be obligated to, (A) remove or correct the New Title Exception to Buyer's reasonable satisfaction at or prior to Closing or (B) cause the issuance by Title Agent, at Closing, of title insurance over or with respect to the New Title Exception.

(iii) Extension. Seller shall have the unilateral right, for the purpose of performing Seller's obligations or exercising Seller's rights under this Section 5.1(a), to extend the Outside Contract Closing Date for a period of up to sixty (60) days by delivery to Buyer of written notice to this effect not more than five (5) days after Seller's receipt of the New Title Exception Notice. The period of any such unilateral extension by Seller pursuant to this Section shall run concurrently with any other extension periods provided for in this Purchase Agreement or the Option Agreement.

(b) **Failure to Correct.** If Seller is (i) unable to either (A) remove or correct a New Title Exception described in Section 5.1(a)(i) above to Buyer's reasonable satisfaction or (B) cause the issuance by Title Agent of title insurance over or with respect to such New Title Exception on or before the Outside Closing Date, or (ii) unable or unwilling to either (A) remove or correct a New Title Exception described in Section 5.1(a)(ii) above to Buyer's reasonable satisfaction or (B) cause the issuance by Title Agent of title insurance over or with respect to such New Title Exception on or before the Outside Contract Closing Date, then Buyer shall have the right and option to terminate this Purchase Agreement by delivery to Seller of notice to this effect on or prior to the Outside Contract Closing Date. If Buyer fails to terminate this Purchase Agreement pursuant to this Section 5.1(b), the New Title Exception shall be deemed accepted by Buyer and the parties shall consummate the subject transaction on or before the Outside Contract Closing Date, on the terms otherwise provided in this Purchase Agreement and the Option Agreement.

(c) **Closing After Correction.** If Seller timely removes or corrects the New Title Exception to Buyer's reasonable satisfaction or obtains an agreement from Title Agent to issue title insurance at Closing over or with respect to the New Title Exception, the Parties shall consummate the subject transaction on the Outside Closing Date on the terms otherwise provided in this Purchase Agreement and the Option Agreement.

6. **Escrow and Closing**

6.1 **Escrow; Escrow Instructions.** Promptly following Buyer's delivery of the Notice of Exercise to Seller, Buyer in consultation with Seller shall open an Escrow account with Escrow Agent, and shall instruct Escrow Agent to prepare and deliver to Buyer and Seller written escrow instructions consistent with the terms of this Purchase Agreement and reasonably satisfactory to both Buyer and Seller. Such escrow instructions shall incorporate the relevant provisions of this Purchase Agreement by reference and shall provide that in the event of any conflict between such incorporated provisions of this Purchase Agreement and such escrow instructions, such incorporated provisions of this Purchase Agreement shall prevail and control. Buyer and Seller shall execute and return such escrow instructions to Escrow Agent not later than the date required by Escrow Agent for a timely Closing. This sale shall be consummated through the Escrow so established with Escrow Agent.

6.2 **Escrow Agent Provisions.** Escrow Agent shall have no liability whatsoever arising out of or in connection with its activity as escrow agent provided it does not act in bad faith or in willful disregard of the terms of this Section and Seller and Buyer jointly and severally agree to indemnify and hold harmless Escrow Agent from all loss, cost, claim, damage, liability and expenses (including reasonable attorneys' fees) which may be incurred by reason of its acting as escrow agent unless caused by Escrow Agent's bad faith or willful disregard of the terms of this Section. Escrow Agent shall be entitled to rely upon any judgment, certification, demand or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein, the propriety or validity thereof, or the jurisdiction of a court issuing any such judgment. Escrow Agent may act in reliance upon any instrument or signature believed to be genuine and duly authorized, and advice of counsel in reference to any matter or matters connected therewith. If a deposit of funds is delivered in connection with the purchase

contract, escrow agent may require execution of a separate escrow agreement governing obligations related to said deposit. In the event the Escrow Agent is the law firm of Fletcher & Fischer, P.L., then the **Escrow Agent shall be entitled to represent Buyer, Skyview Kissimmee Developer, LLC or the Escrow Agent relative to this transaction, and all parties waive any right to object to any such representations due to conflicts of interest or other concerns.**

6.3 Deposits Into Escrow. Not later than the date required by Escrow Agent for a timely Closing, the parties shall provide Escrow Agent with such information, documents, instruments and funds as Escrow Agent may reasonably require to affect the Closing, including but not limited to the following:

(a) **Skyview Deposits.** If applicable, Skyview shall deposit an Assignment of Option and Purchase Agreement as to the Option Parcel(s) to Assignee of Buyer.

(b) **Buyer's Deposits.** Buyer shall deposit into escrow (i) the funds to be applied toward the payment of the Purchase Price and such additional funds as are necessary to pay Buyer's share of the Closing Costs and such other amounts as Buyer has agreed to pay under this Purchase Agreement, (ii) a fully completed, executed and dated General Assignment, and (iii) a Reconveyance Deed.

(c) **Seller's Deposits.** Seller shall deposit into escrow (i) a fully completed, executed and dated Deed (in recordable form), (ii) FIRPTA Certificate, and (iii) General Assignment. All said documents and instruments shall show Buyer (or such other person or entity as Buyer may direct and as approved by Lender) as the grantee, assignee or transferee hereunder.

6.4 Further Assurances. Buyer and Seller agree to execute all instruments and documents and to take all actions reasonably necessary and appropriate to consummate the purchase and sale of the Property, and shall use their best efforts to close in a timely manner.

6.5 The Closing

(a) **Time and Manner.** Upon the satisfaction or waiver of the conditions precedent to exercising the Option and the execution of Notice of Exercise and this Purchase Agreement by the Seller, Closing shall be held on that date provided by Buyer in writing in a subsequent written notice (the "Closing Date"), so long as the Closing Date is not earlier than ten (10) days after Buyer's receipt of the Seller's executed Notice of Exercise and the execution of this Purchase Agreement or later than the Outside Contract Closing Date. Buyer shall tender to the Escrow Agent the Purchase Price for the Option Parcel(s) in good and immediately available funds and Seller shall tender an executed warranty deed for the Option Parcel(s) with a ledger conveying any related water, minerals, oil, gas, and other hydrocarbon substances rights it may possess. Escrow Agent shall thereafter (i) cause the recording of the Deed in the Official Records of Osceola County where the Property is located, (ii) deliver to Buyer the FIRPTA Certificate and the General Assignment, (iii) deliver to Seller all funds deposited by Buyer in escrow with Escrow Agent in payment of the Purchase Price after prorations and deduction of any items chargeable to Seller's account, and (iv) cause the Title Agent to issue or to unconditionally commit to issue the Owner Policy to Buyer.

(b) **Prorations.** The following provisions shall apply with respect to the Property:

(i) **Taxes.** The Parties shall prorate, as of the Closing, all general and special real property taxes and assessments, all personal property taxes and all other taxes and assessments applicable to the Property for the year in which the Closing occurs ("Taxes"). Pursuant to such proration, Buyer shall be charged for all taxes accruing on or after the day of Closing and Seller shall be charged for all taxes accruing prior to the day of Closing. If taxes have not been assessed by the Closing, the Parties shall estimate such proration based upon the most current information available to them concerning the assessed value of the Property and the applicable tax rate; provided, however, when the actual amount of taxes becomes available (and following the completion of any tax protest pending as of the Closing), Buyer shall promptly calculate the correct proration and deliver such calculation to Seller, together with supporting evidence. Not more than thirty (30) days after such delivery, Buyer or Seller, whichever is responsible, shall pay to the other the amount necessary to achieve the correct proration of taxes.

(ii) **Basis.** All prorations made pursuant to this Section 6.5(b) shall be based upon a 30-day month.

(iii) **Survival.** The post-Closing covenants of the Parties set forth in this Section 6.5(b) shall survive the Closing.

(iv) **Closing Costs.** The Parties shall prorate the following items between Seller and Buyer as of 11:59 p.m. on the date immediately preceding the Closing Date and pay the costs and expenses as follows:

a) **Seller Shall Pay:**

1) All update fees, search fees, premium and other costs and expenses associated with the issuance of the Title Commitment, the Title Policy, and all endorsements thereto;

2) cost of recording of any corrective instruments; and

3) any other costs, expenses and/or prorations to be paid by Seller as provided herein.

b) **Buyer shall pay:**

1) the cost of obtaining the Survey; and

2) any other costs, expenses and/or prorations to be paid by Buyer as provided herein.

3) the State of Florida Documentary Stamp Taxes due with respect to the Deed;

4) any costs associated with the financing of the acquisition by the Buyer.

Notwithstanding the foregoing provisions of this Section or anything else to the contrary contained in this Purchase Agreement or the Option Agreement, if the subject transaction fails to close due to the default of either Party, such defaulting Party shall pay all Closing Costs incurred on or prior to the date that such default occurred, provided that if a Deposit has been received and is being retained by Seller, all Closing Costs incurred prior to the Buyer's default shall be paid there from.

(c) **Broker's Commission.** The Parties acknowledge that no real estate broker, other than _____ has been involved in this transaction. Seller/Buyer (select one) shall pay the Broker's Commission in the amount of \$_____ to Broker upon, and only upon, the Closing, provided, however, Broker shall be obligated to execute a Broker's Release in the form of **Exhibit "F"** to the Option Agreement concurrent with delivery of the commission and/or waive any right to a commission. If this provision is left blank or has inserted a -0-, neither the Seller nor the Buyer shall be obligated to pay any Broker's commission.

(d) **Owner Policy.** It shall be a condition precedent to Closing that Title Agent shall issue or unconditionally commit to issue the Owner Policy as of the date of Closing, and to deliver or unconditionally commit to deliver the Owner Policy to Buyer at Closing or reasonably subsequent thereto, subject to receiving payment of the premium therefore. The Owner Policy shall (i) name Buyer as the insured, (ii) insure Buyer's title to the Real Property subject only to the Permitted Exceptions and (iii) be in the amount of the Purchase Price. In addition, if any New Title Exceptions have been accepted by Buyer subject to title insurance coverage therefore pursuant to Section 5.1 of this Purchase Agreement, then title insurance coverage for such New Title Exceptions shall be included in the Owner Policy. The foregoing condition precedent is for the sole benefit of Buyer and can be unilaterally waived by Buyer at any time in writing.

7. **Liquidated Damages** If the Closing does not timely occur due to the default of Buyer, (a) Buyer shall have no further right to purchase the property, (b) Seller shall be entitled to retain the deposit, if any, and waives any further right to claim damages from Buyer or seek other legal or equitable remedies as a result of failure by Buyer to complete the purchase following exercise of the Option; provided, however, that nothing contained in this section shall terminate, vitiate or otherwise abrogate the indemnification provisions contained in the Option Agreement.

8. **REQUIREMENTS**

8.1 Pursuant to Section 20 of the Purchase Option Agreement, Buyer shall commence construction on the acquired Property within twelve months of the Closing Date. In the event Buyer has not commenced construction by that date, Seller may, after providing the notice and opportunity to cure required in Section 20, deliver the Reconveyance Amount and instruct the Escrow Agent to record the Reconveyance Deed. Buyer hereby consents to such recording by Escrow Agent, provided the Seller has delivered the Reconveyance Amount to the Escrow Agent for distribution as contemplated in Section 20. Seller acknowledges that the Reconveyance Deed may be subject to outstanding liens of record if the Reconveyance Amount is insufficient to satisfy outstanding liens against the Property. This paragraph shall survive Closing.

8.2 Buyer agrees that the uses permitted on the Property shall be as set forth in the Development Agreement and the Site Plan and that such uses shall be consistent with the Development Rights assigned to the Property. No other uses shall be permitted without the written consent of Seller. This paragraph shall survive closing.

9. General Provisions

9.1 Incorporation. All of the provisions of the Purchase Option Agreement and Development Agreement referred to herein are incorporated herein by reference for all purposes; provided, however, any reference in such provisions to the Purchase Option Agreement shall be deemed for purposes of this Section to mean or refer to this Purchase Agreement.

9.2 Exhibits. Exhibits D-1, D-2, D-3, D-4, D-5, and D-6, attached to this Purchase Agreement are hereby incorporated by this reference.

[Signatures on following page]

SELLER:

ATTEST

By: _____
City Clerk

Print Name: _____

Approved as to form and legality for the use
and reliance of the City of Kissimmee, Florida,
only.

By: _____
City Attorney

CITY OF KISSIMMEE

By: _____
Mayor/Mayor Protem

Print Name : _____

BUYER:

WITNESS: _____

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

ESCROW AGENT:

WITNESS:

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Exhibit D-1

REAL PROPERTY DESCRIPTION

Exhibit D-2

ASSIGNMENT OF OPTION TO BUYER

_____, 20__

City of Kissimmee
101 Church Street
Kissimmee, FL 34741
Attn: Mike Steigerwald

Re: Assignment of Option as to Option Parcel

Dear Mr. Steigerwald:

The undersigned hereby assigns its Option, pursuant to the Option Agreement to the Option Parcel(s) identified as _____ to _____ (insert Assignee's name and address), together with the Purchase Agreement executed with regard to the Option Parcel(s) described herein provided, however, that this Assignment shall become effective only upon Closing.

Very truly yours,

SKYVIEW KISSIMMEE DEVELOPER, LLC

By: _____

Print Name: _____

Exhibit D-3**RECONVEYANCE DEED**

This Instrument Was Prepared By,
Record and Return To:

_____.

(RESERVED)

DEED

_____ ("Grantor") for valuable consideration, receipt of which is hereby acknowledged, DOES HEREBY GRANT TO **CITY OF KISSIMMEE**, a municipal corporation organized under the laws of the State of Florida, ("Grantee") the real property in the County of Osceola, State of Florida, described on **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all improvements thereon and all easements, rights of way, and other rights appurtenant thereto, subject, however, to the lien of outstanding mortgages and liens, non-delinquent real property taxes and assessments and covenants, conditions, restrictions, easements, rights-of-way and servitudes of record.

DATE: _____

WITNESS:

By: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Exhibit "D-4"

This Instrument Was Prepared By,
Record and Return To:

_____,"

(RESERVED)

SPECIAL WARRANTY DEED

CITY OF KISSIMMEE, a municipal corporation organized under the laws of the State of Florida ("Grantor") for valuable consideration, receipt of which is hereby acknowledged, DOES HEREBY GRANT TO, a _____, ("Grantee") the real property in the County of Osceola, State of Florida, described on **Exhibit A** attached hereto and incorporated herein by this reference, together with all improvements thereon and all easements, rights of way, and other rights appurtenant thereto, subject, however, to the lien of non-delinquent real property taxes and assessments and covenants, conditions, restrictions, easements, rights-of-way and servitudes of record.

DATE: _____

WITNESS:

By: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Exhibit "D-5"**FIRPTA CERTIFICATE**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that the withholding of taxes is not required upon the disposition of U.S. real property interests by _____ ("Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Treasury Regulations);
2. Seller's U.S. employer identification number is _____; and
3. Seller's address is _____.

Seller understands this certification may be disclosed to the Internal Revenue Service by the transferee, and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, we declare that we have examined this certification, and to the best of our knowledge and belief it is true, correct and complete, and we further declare that we have authority to sign this document on behalf of Seller.

Dated: _____, 20__

SELLER:

_____,
a _____

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Exhibit "D-6"**GENERAL ASSIGNMENT**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, _____, ("Assignor"), hereby assigns, sells, transfers, sets over and delivers unto _____, a _____ ("Assignee") all of Assignor's estate, right, title and interest in and to the following which relates to the land described on **Exhibit A** attached hereto and the improvements situated thereon (collectively, the "Property"):

- (a) all licenses, permits, approvals, entitlements, dedications, and subdivision maps issued, approved or granted by any governmental authorities or otherwise in connection with the Property; all development rights and other intangible rights, titles, interests, privileges and appurtenances of Assignor related to or used in connection with the Property and its operation (collectively, "Licenses and Permits"); and
- (b) all engineering, soils, seismic, geologic and architectural reports, studies and certificates pertaining to the Property which are owned by and within the possession or control of Assignor (collectively, "Reports").

ASSIGNOR MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, REGARDING THE LICENSES AND PERMITS AND REPORTS.

Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor under the Licenses and Permits and Reports accruing or arising on or after the date of delivery of this Assignment.

Assignee agrees to defend, indemnify and hold harmless Assignor from and against all claims, damages, losses, costs, expenses and liabilities (including but not limited to all attorneys' fees and court costs and expert witness fees paid or incurred by Assignor) which arise out of or are in any way connected with any act, cause of action or omission by Assignee under or with respect to the Licenses and Permits and Reports arising, accruing or occurring on or after the date of delivery of this Assignment.

Date: _____

WITNESS:

By: _____

Print Name: _____

ASSIGNOR:

_____ a _____

By: _____

Print Name: _____

Title: _____

ASSIGNEE:

By: _____

Print Name: _____

a _____

By: _____

Print Name: _____

Title: _____

EXHIBIT “E”

NOTICE OF TERMINATION

_____, 20__

City of Kissimmee

[Owner's Address]

[Owner's Address]

[Owner's Address]

Re: Notice of Termination of Development Agreement

Dear _____:

The undersigned hereby notifies the City of Kissimmee that it is terminating to that certain Purchase Option Agreement dated as of _____, 2021, between the undersigned (“Skyview”) and the City of Kissimmee (“City”).

This letter shall constitute the Notice of Termination referred to in the Purchase Option Agreement.

Very truly yours,

SKYVIEW KISSIMMEE DEVELOPER, LLC

By: _____

Title: _____

Print Name: _____

EXHIBIT "F"
BROKER RELEASE

This Instrument Was Prepared By,
Record and Return To:

(RESERVED)

BROKER ACKNOWLEDGEMENT AND RELEASE OF LIEN

THIS BROKER ACKNOWLEDGEMENT AND RELEASE (this "Release") is entered into and effective as of the _____ day of _____, 20__, by _____ on behalf of himself, and as authorized signatory on behalf of _____ (collectively referred to herein as "Broker").

BACKGROUND

CITY OF KISSIMMEE, a municipal corporation organized under the laws of the State of Florida, (referred to as the "Seller") is selling certain real property located in City of Kissimmee, Osceola County, Florida, and more particularly described in **Exhibit A** attached hereto ("Property"), to _____ ("Buyer") under that certain Option Agreement ("Option") and that certain Purchase Agreement between Seller and Buyer with an effective date of _____. ("Contract").

AGREEMENT

In consideration of the sums set forth in Paragraph 1 below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Broker hereby agrees as follows:

1. Broker acknowledges that in accordance with the terms of the Option and the Contract, Seller has paid Broker in connection with the sale of the Property to Purchasers a cash commission (including fees and expenses) in the amount set forth on the Closing Statement attached hereto as **Exhibit B**. Broker acknowledges that there are no further amounts, brokerage commissions, fees or expenses due Broker related to or in connection with the sale of the Property.

2. Broker hereby releases and forever discharges Seller, Buyer, and Skyview Kissimmee Developer, LLC, Title Agent, and their agents, partners, directors, shareholders, officers, employees and successors from and against any and all actions, causes of action, judgments, claims, and demands of every kind and nature whatsoever, whether known or unknown, that Broker may have or may hereafter claim against Seller, Buyer, Title Agent, or Skyview Kissimmee Developer, LLC, Title Insurance Company relating to the sale of the Property, including but not limited to any claim for brokerage fees, commissions or expenses or the right now or hereafter to file a lien against the Property, which right is hereby released by Broker.

3. Broker knows of no other broker that would have an interest in the Property or the proceeds from the sale thereof.

4. _____ has the authority to execute this Acknowledgment and Release of Lien on behalf of _____.

5. This Acknowledgement and Release is given as an inducement to and as a part of the consideration for the issuance of an owner's insurance policy insuring the Property (the "**Policy**"), by Fletcher Fischer Pollack, P.L. as agent for Old Republic National Title Insurance Company (the "**Title Company**") and to disburse the net proceeds from the sale of the Property. This affidavit is made with the full knowledge that Title Agent is relying upon the truth of the statements made herein to issue the Policies and disburse the net proceeds.

6. Broker hereby agrees to indemnify and hold Title Agent harmless of and from any and all loss, cost, damage and expense of every kind, including attorneys' and paralegals' fees, which Title Agent shall or may suffer or become liable for on account of reliance on the statements made herein. This Acknowledgement and Release constitutes the representation and warranty of Broker to Title Agent that the foregoing statements are true and correct.

(Remainder of Page Left Blank Intentionally)

IN WITNESS WHEREOF, Broker has executed this Release this ____ day of _____, 2021.

By: _____

Print Name: _____

Its: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and acknowledged before me this ____ day of _____, 2021, by _____, as _____ of _____. He/She is personally known to me or has produced a _____ as identification.

NOTARY PUBLIC (Signature)

(Affix Notary Seal or Stamp)

(Printed Name)

My Commission Expires:

BROKER RELEASE

EXHIBIT F-1

Legal Description

BROKER RELEASE

EXHIBIT F-2

Closing Statement

Exhibit D - RESPONSIBILITIES FOR ANCILLARY PUBLIC IMPROVEMENTS

<u>Improvement</u>	<u>Responsibility to Complete Construction</u>	<u>Responsibility for Cost</u>	<u>Completion Deadline</u>	<u>City Contribution Post Completion (Note 1)</u>	<u>City Contribution During Construction (Note 2)</u>
Purchase of 880 MLK Jr Blvd property for stormwater management and public park use	City	City	1/31/2022		NA
Asbestos Remediation	Skyview	City	1/31/2022		Inc
Demo Existing Structures not slated for temp construction use	Skyview	City	2/15/2022		Inc
Construct City Streets / Sidewalks / Parking spaces	Skyview	City	4/15/2023		\$ 5,900,000
Relocate / Resize / Install master stormwater system to be at least 5' outside of building pads	Skyview	City	4/15/2023		Inc
Install subsurface water, sewer electrical, telecom utilities to within 5' of building pads	Skyview	City	4/15/2023		Inc
Construct public parks and open spaces including landscaping, water features, and accessory structures	Skyview	City	4/15/2023		Inc
Install street lights, street trees, urban accessory structures and street furnishings	Skyview	City	4/15/2023		Inc
CRA Funding Grants and Incentive Programs	Skyview	Skyview and City	7/31/2023	\$ 3,100,000	
Related design, engineering, permitting and inspection costs	Skyview	City	4/15/2022		Inc
Sub-Total Phase 1 City Contribution				\$ 3,100,000	\$ 5,900,000
Phase 2 Ancillary Public Improvements to be mutually determined by City and Skyview prior to execution of Phase 2 land option (Note 3)	Skyview	City	5/15/2024	TBD	TBD
Phase 3 Ancillary Public Improvements to be mutually determined by City and Skyview prior to execution of Phase 3 land option (Note 4)	Skyview	City	6/15/2026	TBD	TBD
Med Arts District / Downtown Kissimmee CRA / City permit / impact / development fee waivers	Skyview	City	12/15/2021	TBD	TBD

Note 1 - Skyview to receive a 15 year tax rebate for Phase 1 equal to \$206,667 per year to commence in the first full year of Phase 1 occupancy and tax valuation.

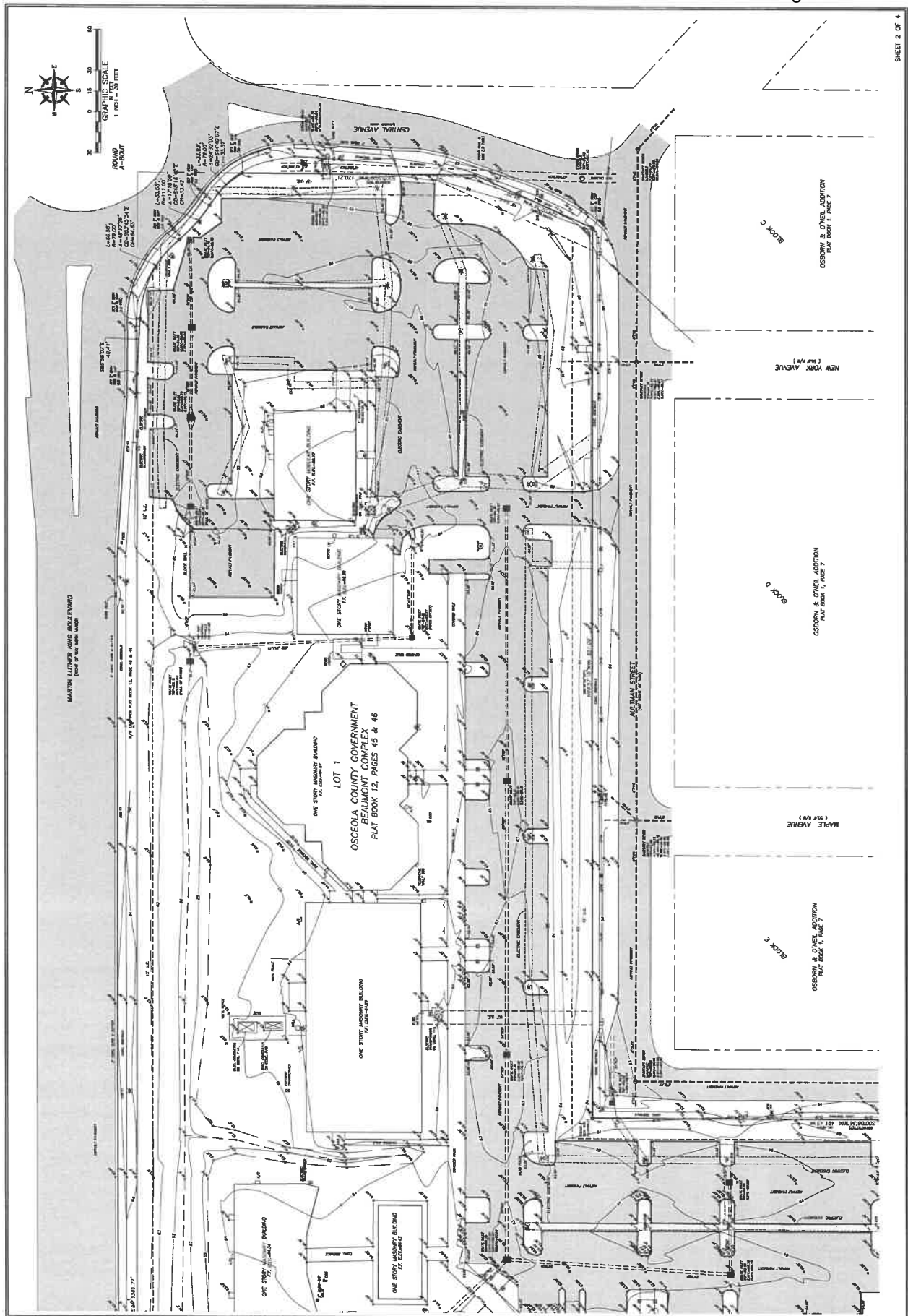
Note 2 - City to reimburse Skyview on a monthly requisition basis for work completed based on approved AIA G702 and G703 Schedule of Values

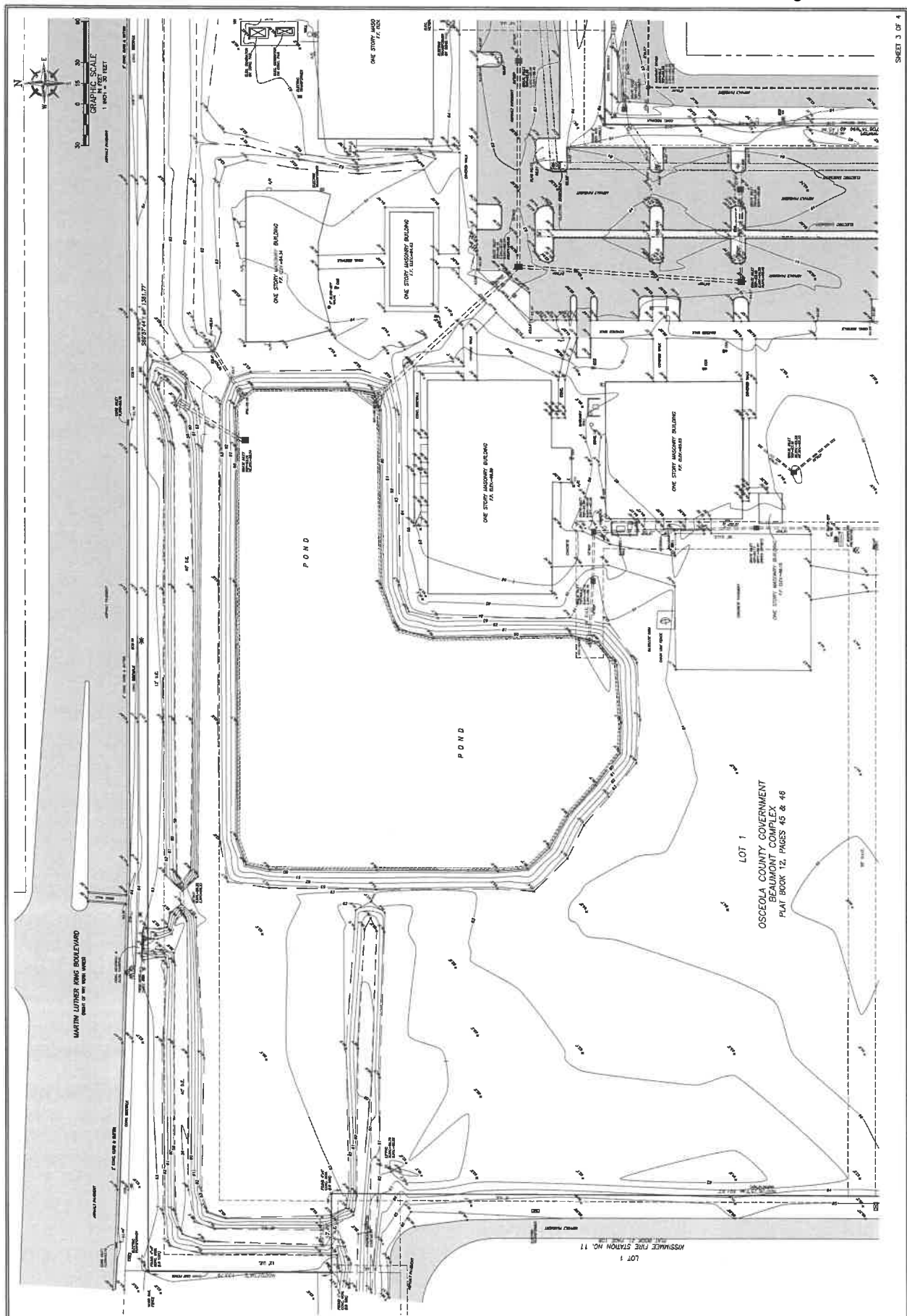
Note 3: Phase 2 may include publicly funded fill to meet site floodplain requirements, and costs of parking garage and storm water vault if warranted by project density.

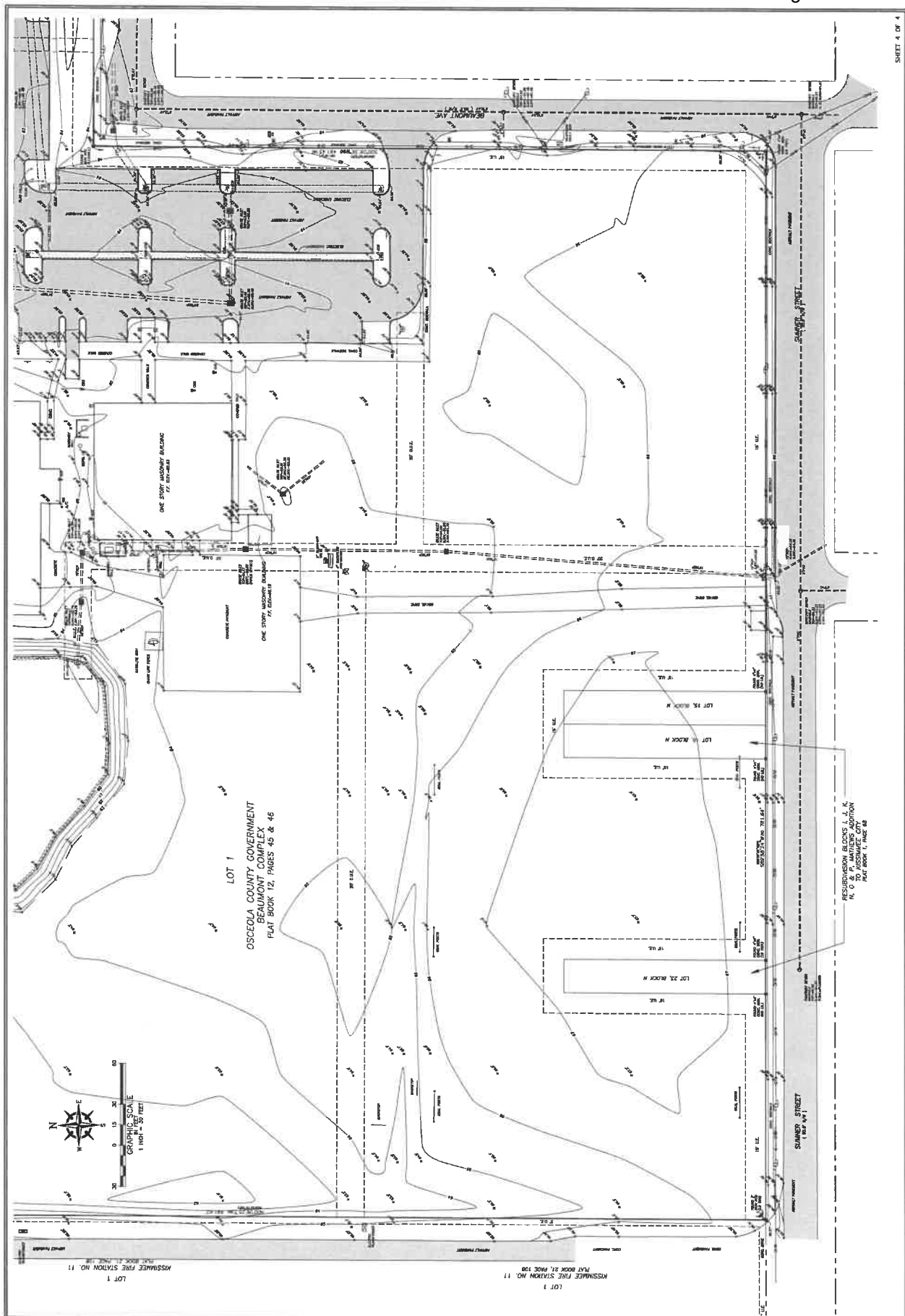
Note 4: Public cost contribution to be determined based upon product mix agreed upon by City and Developer.

Exhibit E - DEVELOPMENT SCHEDULE AND MILESTONES
--

	Target Start	Target End	Milestone
Development Agreement Signed			Dec-2021
Demolish Buildings in Phase 1 / Phase 1 API footprint	Mar-2022	Apr-2022	
Demolish Buildings in Phase 2 footprint		Oct-2023	
Demolish Buildings in Phase 3 footprint		May-2025	
Phase 1 - Multi-Family Apartment Building (20 months)			
Ancilliary Public Improvements (API) Engineering and Permitting	Dec-2021	May-2022	
API Construction	Apr-2022	Apr-2023	
Building Design and Permitting	Dec-2021	May-2022	
Close on Land			Apr-2022
Building Construction	May-2022	Jul-2023	
Vertical Building Construction	Jul-2022		<i>Per 6.03</i>
Completion			Jul-2023
Phase 2 - Resi or Mixed Use Building (21 months)			
API Engineering and Permitting	Jun-2023	Nov-2023	
API Construction	Nov-2023	May-2024	
Building Design and Permitting	Jun-2023	Nov-2023	
Close on Land			Nov-2023
Building Construction	Nov-2023	Feb-2025	
Vertical Building Construction	Jan-2024		<i>Per 6.03</i>
Completion			Feb-2025
Phase 3 - Mixed-Use Commercial Bldg (23 months)			
API Engineering and Permitting	Dec-2024	Jun-2025	
API Construction	Jun-2025	Jun-2026	
Building Design and Permitting	Dec-2024	Jun-2025	
Close on Land			Apr-2025
Building Construction	Jun-2025	Oct-2026	
Vertical Building Construction	Sep-2025		<i>Per 6.03</i>
Completion			Nov-2026
End of Initial Development Term (5 years)			Nov-2026







THIS INSTRUMENT RETURN TO:
Linda Hansell, City Clerk
City of Kissimmee
101 Church Street
Kissimmee, FL 34741

THIS INSTRUMENT PREPARED BY:
Kalanit Oded, Deputy City Attorney
City of Kissimmee
101 Church Street
Kissimmee, FL 34741

Property Appraiser's PIN:
Part of _____

TEMPORARY CONSTRUCTION AND ACCESS EASEMENT
(From City of Kissimmee to Skyview)

THIS TEMPORARY CONSTRUCTION EASEMENT is made this _____, between, the **CITY OF KISSIMMEE**, a Florida municipal corporation whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter the "City"), as grantor, and **SKYVIEW KISSIMMEE DEVELOPER LLC**, a Delaware Limited Liability Company, having its principal place of business at 330 N Beaumont Ave, Kissimmee, FL 34741, (hereinafter referred to as "Skyview"), as grantee.

WITNESSETH:

WHEREAS, Skyview, pursuant to that certain Master Development Agreement (the "Agreement") dated _____, is redeveloping the Beaumont Development Parcel (the "Project"); and

WHEREAS, Skyview is constructing and/or utilizing the Ancillary Public Improvements and Necessary Site Improvements owned by City for developing each phase of the Project; and

WHEREAS, in connection with said work, it will be necessary to have access to the real property owned by the City; and

THAT the City, for and in consideration of the sum of TEN AND NO/100 DOLLAR (\$10.00) and other good and valuable considerations, to it in hand paid by Skyview, the receipt whereof is hereby acknowledged, hereby grants unto Skyview a temporary construction and access easement for the demolition of existing structures on the Beaumont Development Parcel and the construction of Necessary Site Improvements, the Ancillary Public Improvements and to take all other actions permitted under the Agreement, over, under, and across the following described real property, located and situate in the County of Osceola, State of Florida, to wit:

**See Legal Description
attached hereto as Exhibit "A"
and incorporated herein by reference;**

A portion of PIN: _____,
commonly referred to as _____[address]

TITLE TO THE PROPERTY DESCRIBED HEREIN, AS WELL AS
THE LEGAL DESCRIPTION, HAS NOT BEEN EXAMINED OR
APPROVED BY THE CITY OF KISSIMMEE OR THE CITY
ATTORNEY'S OFFICE

(hereinafter, the "Temporary Easement Area").

City hereby grants to the Skyview permission to enter the Temporary Easement Area for demolition of existing structures on the Beaumont Development Parcel and the construction of Necessary Site Improvements, the Ancillary Public Improvements and to take all other actions permitted under the Agreement, together with right of ingress and egress for such purposes. This easement shall become null and void upon the earlier of (i) the passage of five (5) years; or (ii) the date on which Skyview completes the work described herein; or (iii) the date of violation of a condition of this Easement, violation of which as determined by the City.

Skyview, its successors and assigns agree to the following covenants and conditions of this Easement:

1. The rights granted herein shall not be construed to unreasonably interfere with use of the premises adjacent to the Temporary Easement Area.
2. Skyview shall restore the ground surface and repair any damage to the Temporary Easement Area, as applicable, so as to restore it to its condition prior to the Skyview's work in the Temporary Easement Area.
3. Skyview agrees to indemnify and hold harmless the City from all liabilities, claims, damages, losses, costs and expenses, including attorneys' fees and litigation costs, resulting from or arising out of use of the Temporary Easement Area by Skyview, its employees, contractors, sub-contractors, materialmen, laborers and its or their agents.
4. In no event shall Skyview's interest in the Temporary Easement Area be subject to liens arising from Skyview's use of the Temporary Easement Area and Skyview shall promptly cause any such lien imposed against the Temporary Easement Area to be discharged or bonded off.
5. Nothing herein shall render Skyview or the work performed within the Temporary Easement Area to be exempt from all applicable laws, rules, regulations, ordinances, resolutions, policies or procedures, including but not limited to permitting requirements.

IN WITNESS WHEREOF, the undersigned have set their hand and seal this day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness #1 Signature

Witness #1 Name

Witness #2 Signature

Witness #2 Name

CITY OF KISSIMMEE, a Florida municipal
corporation

By: _____
Olga Gonzalez, Mayor

(City Seal)

ATTEST:

Linda Hansell, City Clerk

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing instrument was acknowledged before me this ____ day of _____, 202_, by means of ☐ physical presence or ☐ online notarization, by Olga Gonzalez who is personally known to me or has produced identification.

Notary Seal:

Notary: _____
Print Name: _____
My Commission Expires: _____

The foregoing easement is accepted and agreed to by **SKYVIEW KISSIMMEE DEVELOPER LLC**, a Delaware limited liability company, this ____ day of _____, 202__.

SKYVIEW KISSIMMEE DEVELOPER LLC, a
Delaware limited liability company

Name: _____
Title: _____

<u>Exhibit H - STAGING LOCATIONS</u>

Phase 1 Temporary Construction Office will be located in the building currently located at 330 N. Beaumont Ave

Phase 1 Staging will occur on future development parcel F2. F2 parcel is indicated in Exhibit C.

Phase 2 Temporary Construction Office will be located in the building currently located at 370 N. Beaumont Ave

Phase 2 Staging will occur on future development Parcel F1. F1 parcel is indicated in Exhibit C.

Phase 3 Staging will be evaluated between Skyview and City prior to commencement of Phase 3 construction

THIS INSTRUMENT RETURN TO:

Linda Hansell, City Clerk
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

THIS INSTRUMENT PREPARED BY:

Kalanit Oded
Deputy City Attorney
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

Property Identification Nbr: _____

PROPERTY USE LICENSE AGREEMENT

THIS PROPERTY USE AGREEMENT ("Agreement"), made and entered into as of the _____ day of _____, 202_ by and between the CITY OF KISSIMMEE, FLORIDA, a Florida Municipal Corporation (hereinafter, the "City"), whose address is 101 Church Street, Kissimmee, FL 34741, and SKYVIEW KISSIMMEE DEVELOPER LLC, a Delaware Limited Liability Company, having its principal place of business at 330 N Beaumont Ave, Kissimmee, FL 34741, (hereinafter, the "Licensee").

WITNESSETH:

WHEREAS, Skyview, pursuant to that certain Master Development Agreement (the "Development Agreement") dated _____, is redeveloping the Beaumont Development Parcel (the "Project").

WHEREAS, City is the owner of certain vacant real property within the City and described as follows:

INSERT LEGAL DESCRIPTION

(hereinafter referred to as the "Licensed Area").

WHEREAS, Licensee is desirous of using the Licensed Area as a staging site for construction of the Beaumont Redevelopment Parcel, as depicted on Exhibit "A" attached hereto;

WHEREAS, the City Commission has authorized Licensee to use such Licensed Area subject to the Development Agreement and other terms and conditions for said use.

NOW, THEREFORE, for and in consideration of the sum of \$10.00 and certain other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned agree as follows:

1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated herein and acknowledged to be true and correct. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement. As used in this Agreement, the term "Licensee" shall refer to and mean the above-named Licensee and the successors and assigns of the Licensee as owners in fee simple of the Property.

2. License Granted. Pursuant to the terms hereof, Licensee is hereby granted a license for the exclusive use of the Licensed Area as a staging area for construction activities on the Beaumont Development Parcel pursuant to the Development Agreement.

3. Maintenance Responsibilities. The Licensee shall be exclusively responsible for the maintenance of the Licensed Area during the term of the Agreement. Maintenance shall include promptly and continuously keeping all of the Licensed Area clean, free of litter, debris, branches, tree limbs, brush, grass, trash, junk, refuse, inoperative motor vehicles, junk cars and shall comply with the standards established by the City Code for maintenance of private properties. The Licensee shall be responsible for any damage to the Licensed Area subject to this Agreement during the term hereof regardless of who commits said damage. If the City determines the Licensed Area is not being properly maintained, it shall provide Skyview with written notice and no less than ten (10) days opportunity to cure the issue. The Licensee shall make no alterations or commence any construction to the Licensed Area unless otherwise authorized by the City.

4. License Revocation. The Licensee agrees that this authorized usage may be revocable at the discretion of the City, in accordance with the Development Agreement.

5. Indemnification; Liability of City; Insurance.

(a) SkyView hereby agrees to release and indemnify and save harmless the City, its officers, agents, employees and elected and appointed officials from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of SkyView's operations in connection herewith or SkyView's use or occupancy of any portion of the Licensed Area and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of SkyView.

(b) The City, in turn, and subject to the limitations of applicable law, agrees to indemnify SkyView, its officers, agents, and employees from damages resulting solely from (1) the sole negligence or intentional misconduct of the City's officers, agent and employees; or (ii) the City activities on the Licensed Area.

(c) The Licensee shall maintain insurance in accordance with the Development Agreement.

6. Attorney's Fees. Each party waives the right to attorney fees and costs for enforcement of this Agreement, including any legal actions or appeal. Skyview and City will make commercially reasonable efforts to include such a waiver in contracts with any consultants, subcontractors and affiliates of either party.

7. Entire Agreement. This agreement shall constitute the entire agreement between the parties.

8. Duration. This Agreement or the rights under this Agreement are not assignable or otherwise transferable in whole or in part by the Licensee. The term of this Agreement is for the Term of the Development Agreement, which shall be no less five (5) years and commences on _____.

9. Enforcement. Enforcement of this Agreement may be by the Licensee or the City and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages to the extent permitted by this Agreement. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for non-enforcement hereof. Any non-enforcement by the City shall not be construed to be a waiver of the right to enforce this Agreement at a future time or declare its breach.

10. Severability. Invalidity of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

11. Interpretation. It is agreed that this Agreement has been mutually negotiated and written by all parties hereto. Consequently, this Agreement shall not be interpreted more harshly against any one party as drafter of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

Signed, Sealed and Delivered
in the presence of:

LICENSEE:

Sign: _____
Print Name: _____

By: _____
Skyview Kissimmee Developer LLC

Sign: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this ____ day of _____, 202_, by means of ☐ physical presence or ☐ online notarization, by _____, who is personally known to me or has produced identification.

Notary Seal:

Notary: _____
Print Name: _____
My Commission Expires: _____

CITY:

CITY OF KISSIMMEE, FLORIDA,
a Florida Municipal Corporation

Sign: _____
Print Name: _____

Sign: _____
Print Name: _____

By: _____
City Manager

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this ____ day of _____, 202_, by means of ☐ physical presence or ☐ online notarization, by _____, who is personally known to me or has produced identification.

Notary Seal:

Notary: _____
Print Name: _____
My Commission Expires: _____

EXHIBIT “K”

INSURANCE REQUIREMENTS

- 1) Commercial General Liability: \$1,000,000 per occurrence /\$2,000,000 general aggregate.
- 2) Products Liability: \$2,000,000
- 3) Excess Liability: \$5,000,000.00 per occurrence/\$5,000,000 general aggregate.
- 4) Workers’ Compensation and Employers’ Liability Per Statutory Requirements

ITEM 7.E
APPROVAL OF A SPACE USE PERMIT FOR LEAD AIR

Request

Request Commission approval of a Space Use Permit for Lead Air.

Explanation

Lead Air is an aviation related company that currently leases hangar space from WA Hangars in the Business Airpark. Their on-airport operation involves mounting their surveillance and sensor systems onto customers' aircraft. The systems are manufactured off-airport at their site on Hoagland Blvd on the airport's perimeter.

Lead Air has entered into a long-term contract to provide their services which will require additional space that is not available in their current location. They have requested to enter into a Space Use Permit (SUP) for the "lean to" open portion (approximately 2,475 square feet) of our Airport Maintenance hangar at 4009 4th Street.

The new SUP will be effective December 31, 2021, through December 31, 2023. The monthly rent for the SUP will be \$231.00 + \$17.32 (7.5% sales tax) monthly = \$248.

Recommendation

Staff recommends Commission approval of the Space/Use Permit for Lead Air.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. Lead Air Space Use-Signed

**CITY OF KISSIMMEE
KISSIMMEE GATEWAY AIRPORT**

SPACE/USE PERMIT

THE CITY OF KISSIMMEE, hereinafter referred to as "City" by its execution hereof, hereby authorizes the following person or entity, **Lead Air**, hereinafter referred to as "Permittee," to conduct business and/or occupy space at Kissimmee Municipal Airport, hereinafter referred to as "the Airport" for the purpose or purposes and on the terms and conditions hereinafter stated.

1. **Permittee.** The name, address and telephone number of the Permittee hereunder are as follows:

Name: Mr. Jean Pierre Barriere
Lead'Air Inc.

Address: 113 S Hoagland Blvd.
Kissimmee, FL 34741

Telephone: 407-343-7571

2. **Business to be Conducted.** Permittee is authorized to conduct the following business at the Airport:

Aircraft Parking and Storage of Materials

3. **Space to be Occupied.** Permittee is authorized to use the following space at the Airport: Approximately 2,475 Square Feet (SF) of covered aircraft parking and storage space and adjacent paved area at 4009 4th Street, Kissimmee Fl. 34741

4. **Term.** This Permit is effective from **December 31, 2021**, through **December 31, 2023**, unless sooner terminated in accordance with the terms and provisions hereof. Notwithstanding the foregoing, however, either party hereto shall have the right to terminate this Permit prior to the date upon which it would otherwise expire by giving the other party at least thirty (30) days written notice of intention to do so.

5. **Consideration.** In consideration for the rights granted hereunder by City, Permittee hereby agrees to pay to City, without demand, on the first day of each calendar month during the term hereof, in advance, without set-off or deduction, the following sum or sums, plus any and all sales, use, ad valorem, or any other taxes due thereon:

\$231.00 + \$17.32 (7.5% sales tax) monthly= \$248.32

In the event that the term of this Permit shall commence or end on any day other than the first and last day, respectively, of a calendar month, the consideration due hereunder for a portion of such month shall be pro-rated on a per-diem basis, and the first payment shall be due on or before the effective date hereof. All payments due hereunder shall be remitted to the Office of the Airport Director unless otherwise stated.

6. **Amount of Insurance Required.** The amount of comprehensive general liability and automobile liability insurance required to be carried by Permittee \$100,000.00.
7. **Security Deposit.** The amount of the security deposit to be held is N/A.
8. **Additional Terms and Conditions.** Permittee does hereby further agree to abide by all of the terms

and conditions attached hereto. Permittee will be responsible for cost of electric utility.

9. **Default.** If either party fails to perform or comply with the terms of this permit, then either party may declare a default and terminate this permit immediately.
10. **Waiver of Jury Trial/Venue.** It is mutually agreed by and between the Permittee and the City 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. Venue of all actions shall be Osceola County, Florida. In any such action the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings.

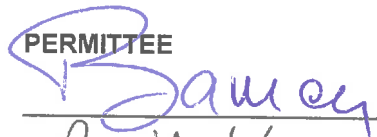
CITY OF KISSIMMEE

By: Mayor/Olga Gonzalez

Date: _____

ATTEST:

City Clerk

PERMITTEE


President/owner
Name-Title

Corporate Seal (or Notary Seal)

Approved as to form and correctness
this _____ day of _____, 2021.

City Attorney

ITEM 7.F

REQUEST TO APPROVE PROPERTY CONVEYANCE DOCUMENTS RELATING TO OSCEOLA COUNTY'S BILL BECK BOULEVARD - SEGMENT B ROADWAY IMPROVEMENT PROJECT

Request

This request is for City Commission approval to dedicate utility easements to the Kissimmee Utility Authority and the Toho Water Authority to help complete the expansion and improvement of Segment B of the Bill Beck Boulevard County expansion project.

Explanation

Staff requests Commission approval to convey a 10-foot utility easement to the Kissimmee Utility Authority in order to install the utilities necessary for the Bill Beck Boulevard - Segment B Roadway Improvement Project and a second 10-foot utility easement to the Toho Water Authority for similar purposes. These instruments are necessary for the completion of the Bill Beck Boulevard Project and involve a small portion of a retention pond parcel owned by the City just north of the Kissimmee Charter Academy.

This County project will extend Bill Beck Boulevard from its current terminus at the Kissimmee Charter Academy north to Osceola Parkway, providing a much needed alternative to Michigan Avenue for Mill Run/Oak Run area residents.

Recommendation

Staff recommends approval of the two conveyance documents.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. COK to KUA Easement
2. Exhibit A of COK to KUA Easement -- Bill Beck Blvd -Seg B
3. COK to TWA Easement
4. Exhibit A of COK to TWA Easement -- Bill Beck Blvd -Seg B

This instrument was prepared by:
Name City of Kissimmee
Address 101 Church Street
Kissimmee, FL 34741

Return to: Kissimmee Utility Authority
1701 W. Carroll Street
Kissimmee, FL 34741

Property Appraiser's Parcel
Identification No. _____

EASEMENT DEED

THIS INDENTURE, made the ____ day of _____, 20 21, by City of Kissimmee, whose address is 101 Church Street, Kissimmee, FL 34741, hereinafter called the Grantor, and KISSIMMEE UTILITY AUTHORITY, a body politic, in Osceola County, Florida, Grantee.

WITNESSETH:

That for and in consideration of the sum of \$10.00 DOLLARS and other valuable considerations, in hand paid to the Grantor by the Grantee, receipt whereof is hereby acknowledged, said Grantor does hereby grant, bargain, sell, convey and quitclaim to said Grantee, its successors and assigns forever, a right of way and easement with the right, privilege and authority to said Grantee, its successors or assigns, to erect, construct, operate and maintain a line or lines for the transmission and/or distribution of electric energy, for the transmission of information via fiber optic lines and/or any other purposes of the Grantee for which said line or lines can be used without exceeding the boundaries of said right of way and easement thereover for any and all purposes for which electric energy is now or may hereafter be used, and for any and all other purposes of the grantee consistent with this right of way and easement with all necessary poles, towers, wires, cables, fixtures, and appliances, including guy wires, stubs, anchors and brace poles, cable television and telephone wire connections (the aforementioned hereinafter being referred to as "Facilities"), through, over and upon the lands of the Grantor in Osceola County, Florida, described as:

(See Exhibit A)

together with the right of the Grantee, its successors and assigns, to cut and remove from said right of way as above described, any trees, overhanging branches, or other obstructions which may endanger the safety or interfere with the operation and maintenance of said transmission and/or distribution and/or fiber optic lines and such fixtures and appliances, poles, anchors and other appurtenances thereto, or any structure on said right of way; together with the privilege and right of ingress, egress and regress in and over the above described right of way at any and all times for the purpose of patrolling the said transmission line, or repairing, building, renewing or adding poles or other fixtures and equipment to said line, and the doing of anything necessary, useful or convenience for the full enjoyment of the easement herein granted.

Said Facilities shall be located in the following described "Easement Area."

A ten (10) foot wide Easement Area depicted on the attached Sketch labeled as Exhibit A.

Grantee will be responsible for, and will indemnify, save harmless and defend Grantor against and from all claims and suits for, and all liability loss or expense ensuing from, or incidental to or in connection with, damage to, or loss of any property of Grantor, Grantee, the agents, servants, licensees contractors, invitees or employees of either or any Person and indemnify against and from all claims and suits for, all liability, loss or expense arising out of, or incidental to or in connection with injury to or death of persons, including agents, servants, contractors, licensees, invitees, or employees of Grantor or Grantee, or any other person, if damage, loss, injury or death arise in any manner, directly or indirectly, out of, or incidental to, or in connection with the granting of this Easement, except when such losses and damages are due to the negligence of Grantor, his successors, assigns, lessees, licensees and agents, or third parties.

Nothing contained in this Easement Deed shall either constitute or be construed as a waiver by Grantee of the sovereign immunity it enjoys under Florida Statutes, Section 768.28, and the accompanying limitations of liability applicable to Grantee thereunder.

If this Easement terminates for any reason, Grantee will restore the land to its former condition upon the option Grantor including, leveling and filling earth, and removing any improvements placed on the Easement area.

"Grantor" is used for singular or plural as context requires.

IN WITNESS WHEREOF the said grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature

Printed name

Witness Signature

Printed name

By: _____

Olga Gonzalez, Mayor
Printed name and Title

By: _____

Printed name and Title

STATE OF Florida
COUNTY OF Osceola

THE FOREGOING INSTRUMENT was acknowledged before me by means of
☐ Physical Presence, - **OR** -
☐ Online Notarization,

this ____ day of _____, by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal on this ____ day of _____, A.D. 20 _____.

My commission expires: _____
SEAL

Notary Public

Printed or typed name

**SKETCH OF DESCRIPTION
TWA & KUA EASEMENT**

SEE SHEET 2 OF 2 FOR SKETCH

Page 154 of 622

LEGAL DESCRIPTION:

A portion of the Northeast 1/4 of the Northeast 1/4 of Section 11, Township 25 South, Range 29 East, Osceola County, Florida being more particularly described as follows:

BEGIN at the Northeast corner of Lot 134, WESTWOOD FOREST, as recorded in Plat Book 6, Pages 28 and 29 of the Public Records of Osceola County, Florida; thence run S89°35'28"E, along the North line of the Northeast 1/4 of the Northeast 1/4 of Section 11, Township 25 South, Range 29 East, a distance of 45.38 feet to a point on a Non-Tangent curve, concave to the Southwest, having a Radius of 495.67 feet and a Central Angle of 56°08'30"; thence run Southeasterly along the arc of said curve, also being the proposed West Right of Way line of Bill Beck Boulevard, a distance of 485.69 feet (Chord Bearing = S47°24'05"E, Chord = 466.49 feet) to the Point of Tangency; thence, continuing along said proposed West Right of Way line, run S19°19'50"E, a distance of 376.41 feet; thence run N89°41'52"W, a distance of 21.23 feet; thence run N19°19'50"W, a distance of 369.27 feet to the Point of Curvature of a curve concave to the Southwest, having a Radius of 475.67 feet and a Central Angle of 55°51'12"; thence run Northwesterly along the arc of said curve, a distance of 463.69 feet (Chord Bearing = N47°15'26"W, Chord = 445.55 feet); thence run N89°59'51"W, a distance of 42.75 feet to a point on the East line of the aforementioned Lot 134; thence run N00°12'12"E, along said East line, a distance of 20.29 feet to the POINT OF BEGINNING.

Containing 17,838 square feet or 0.41 acres, more or less.

SURVEYOR'S NOTES:

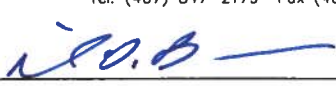
- 1.) BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE. (NAD 83, 1990 ADJUSTMENT) AS DETERMINED FROM GLOBAL POSITIONING SYSTEM (GPS). REFERENCE BEARING BEING THE NORTH LINE OF THE NE 1/4 OF THE NE 1/4, SEC. 11-25-29 AS S89°35'28"E.
- 2.) THIS DRAWING REPRESENTS A SKETCH OF DESCRIPTION AND IS NOT A BOUNDARY SURVEY.
- 3.) NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: **CONSOR ENGINEERS, LLC**

DATE	11/19/2020	REVISIONS
SCALE	1" = 200'	
SECTION	11	
TWP.	25 S., RNG. 29 E.	
JOB NO.	20-053	SHEET 1 OF 2

**JOHNSTON'S
SURVEYING INC.**

900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

 11/20/20
RICHARD D. BROWN, P.S.M. #5700 (DATE)
NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.



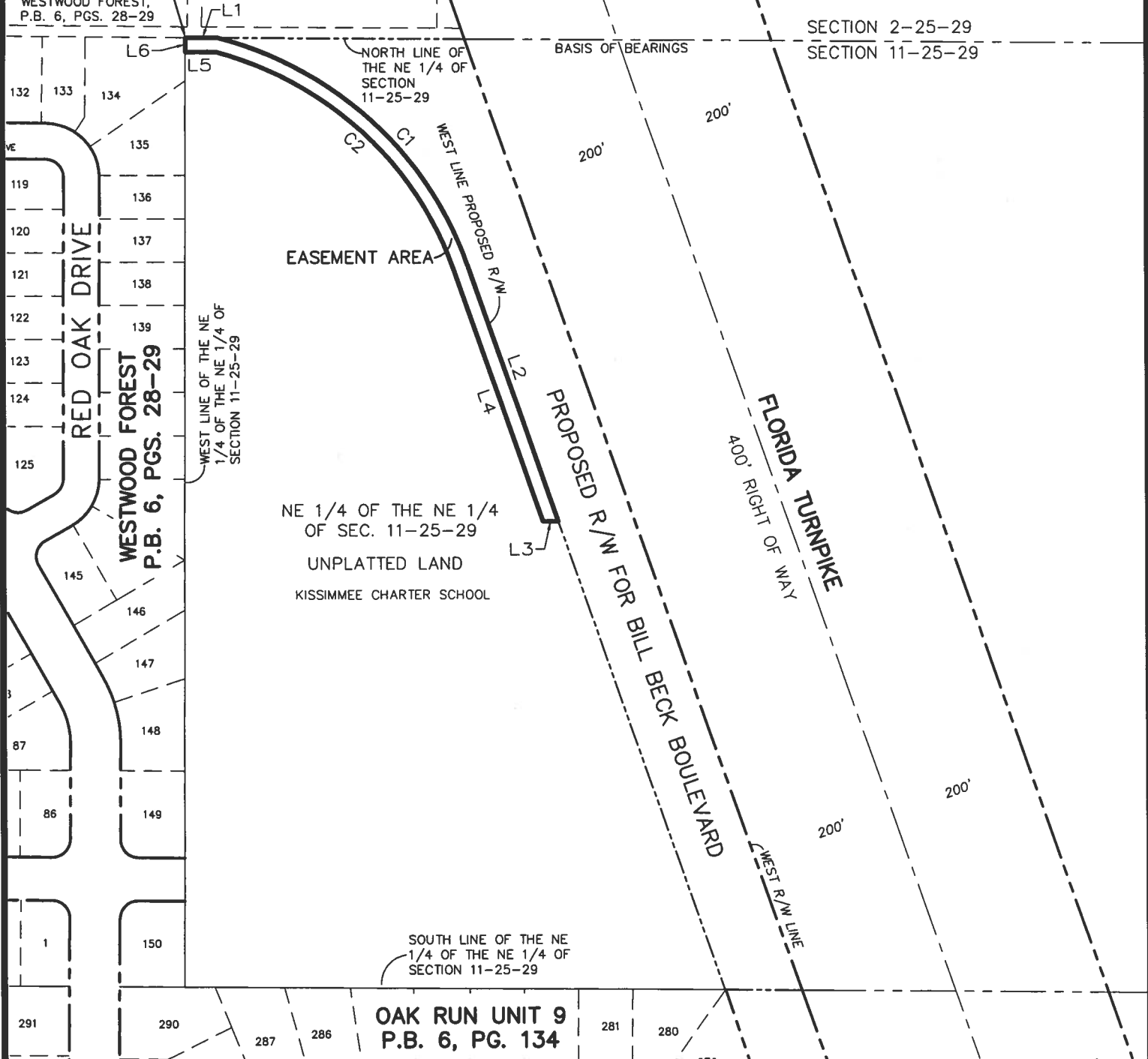
SKETCH OF DESCRIPTION TWA & KUA EASEMENT

SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION

SCALE: 1" = 200'

LOT 4 LOT 5
MARTHA A. BOICES SUBDIVISION
P.B. 1, PG. 84

P.O.B.
NE CORNER LOT 134,
WESTWOOD FOREST,
P.B. 6, PGS. 28-29



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S89°35'28"E	45.38'
L2	S19°19'50"E	376.41'
L3	N89°41'52"W	21.23'
L4	N19°19'50"W	369.27'
L5	N89°59'51"W	42.75'
L6	N00°12'12"E	20.29'

CURVE TABLE

CURVE #	RADIUS	DELTA	LENGTH	CHD. BEARING	CHORD LENGTH
C1	495.67'	56°08'30"	485.69'	S47°24'05"E	466.49'
C2	475.67'	55°51'12"	463.69'	N47°15'26"W	445.55'

JOHNSTON'S SURVEYING INC.

900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 2 OF 2

THIS INSTRUMENT PREPARED BY:

Kalanit Oded, Deputy City Attorney

City of Kissimmee

101 Church Street

Kissimmee, Florida 34741

Property Appraiser's PIN:

Part of _____

UTILITY EASEMENT

(From City of Kissimmee to Tohopekaliga Water Authority)

THIS UTILITY EASEMENT is made this _____, between, **CITY OF KISSIMMEE**, a Florida Municipal Corporation, whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter the "GRANTOR"), as grantor, and **TOHOPEKALIGA WATER AUTHORITY**, an independent special district, whose address is 951 Martin Luther King Blvd., Kissimmee, FL 34741, (hereinafter "GRANTEE"), as grantee.

WITNESSETH:

THAT the GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLAR (\$10.00) and other good and valuable considerations, to it in hand paid by the UTILITY PROVIDER, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alienates, remises, releases, conveys, and confirms unto the GRANTEE an easement for purposes of ingress and egress to and installing, maintaining, repairing or restructuring water and waste water utilities over, under, and across the following described real property, located and situate in the County of Osceola, State of Florida, to wit:

**See Legal Description
attached hereto as Exhibit "A"
and incorporated herein by reference;**

A portion of PIN: _____,
commonly referred to as _____[address]

TITLE TO THE PROPERTY DESCRIBED HEREIN, AS WELL AS THE
LEGAL DESCRIPTION, HAS NOT BEEN EXAMINED OR APPROVED
BY THE CITY OF KISSIMMEE OR THE CITY ATTORNEY'S OFFICE

(hereinafter, the "Easement").

GRANTOR may continue to use the surface of the easement areas for any lawful purposes that do not unreasonably interfere with the GRANTEE's use of its easement as specified above.

The use of the utility easement granted herein does not run to the public and no rights hereunder are granted or approved except for the purposes and use by GRANTEE, and its agents, successors and assigns solely for the uses and purposes stated herein.

GRANTEE will, at its sole cost and expense, restore the surface of all disturbed areas on the utility easement to their original condition as nearly as is reasonably practicable, the damage or disturbance to which shall have been occasioned by the maintenance, operation, repair, inspection, replacement or removal of the water and wastewater utilities described above or other exercise by the GRANTEE of its rights under this Easement.

GRANTOR shall not place any permanent buildings or foundations on, over, or across the Easement. GRANTEE shall have the right and authority to clear the easement area of trees, limbs, vegetation, or other physical objects which endanger or interfere with the safe or efficient installation, operation, or maintenance of facilities existing within the easement. However, GRANTEE shall not be authorized to take any action which impairs the function and/or operation of the water retention structure placed within the Easement.

GRANTEE will be responsible for, and will indemnify, save harmless and defend GRANTOR against and from all claims and suits for, and all liability loss or expense ensuing from, or incidental to or in connection with, damage to, or loss of any property of GRANTOR, GRANTEE, the agents, servants, licensees contractors, invitees or employees of either or any person and indemnify against and from all claims and suits for, all liability, loss or expense arising out of, or incidental to or in connection with injury to or death of persons, including agents, servants, contractors, licensees, invitees, or employees of GRANTOR or GRANTEE, or any other person, if damage, loss, injury or death arise in any manner, directly or indirectly, out of, or incidental to, or in connection with the granting of this Easement, except when such losses and damages are due to the negligence of GRANTOR, his successors, assigns, lessees, licensees and agents, or third parties.

GRANTOR warrants that it is the record owner of the land, and has the power and authority to grant this easement.

By delivery and acceptance hereof, the Parties and their successors intend to and shall be bound by the terms and conditions hereof.

IN WITNESS WHEREOF, the GRANTOR has hereunto set his/her hand and seal this day and year first above written.

Signed, Sealed and Delivered in Presence of:

By:
CITY OF KISSIMMEE

Witness #1 Signature

(AUTHORIZED SIGNATORY)

Printed Name of Witness # 1

Witness #2 Signature

(SEAL)

Printed Name of Witness #2

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by means of ☐ physical presence or ☐ online notarization, by _____, who is personally known to me or has produced identification.

Notary Seal:

Notary: _____
Print Name: _____
My Commission Expires: _____

The foregoing easement is accepted and agreed to by **TOHOPEKALIGA WATER AUTHORITY**, an independent special district, this ____ day of _____, 2021.

Name: _____
Title: _____

**SKETCH OF DESCRIPTION
TWA & KUA EASEMENT**

SEE SHEET 2 OF 2 FOR SKETCH

Page 159 of 622

LEGAL DESCRIPTION:

A portion of the Northeast 1/4 of the Northeast 1/4 of Section 11, Township 25 South, Range 29 East, Osceola County, Florida being more particularly described as follows:

BEGIN at the Northeast corner of Lot 134, WESTWOOD FOREST, as recorded in Plat Book 6, Pages 28 and 29 of the Public Records of Osceola County, Florida; thence run S89°35'28"E, along the North line of the Northeast 1/4 of the Northeast 1/4 of Section 11, Township 25 South, Range 29 East, a distance of 45.38 feet to a point on a Non-Tangent curve, concave to the Southwest, having a Radius of 495.67 feet and a Central Angle of 56°08'30"; thence run Southeasterly along the arc of said curve, also being the proposed West Right of Way line of Bill Beck Boulevard, a distance of 485.69 feet (Chord Bearing = S47°24'05"E, Chord = 466.49 feet) to the Point of Tangency; thence, continuing along said proposed West Right of Way line, run S19°19'50"E, a distance of 376.41 feet; thence run N89°41'52"W, a distance of 21.23 feet; thence run N19°19'50"W, a distance of 369.27 feet to the Point of Curvature of a curve concave to the Southwest, having a Radius of 475.67 feet and a Central Angle of 55°51'12"; thence run Northwesterly along the arc of said curve, a distance of 463.69 feet (Chord Bearing = N47°15'26"W, Chord = 445.55 feet); thence run N89°59'51"W, a distance of 42.75 feet to a point on the East line of the aforementioned Lot 134; thence run N00°12'12"E, along said East line, a distance of 20.29 feet to the POINT OF BEGINNING.

Containing 17,838 square feet or 0.41 acres, more or less.

SURVEYOR'S NOTES:

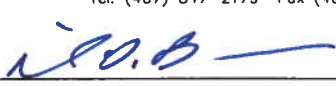
- 1.) BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE. (NAD 83, 1990 ADJUSTMENT) AS DETERMINED FROM GLOBAL POSITIONING SYSTEM (GPS). REFERENCE BEARING BEING THE NORTH LINE OF THE NE 1/4 OF THE NE 1/4, SEC. 11-25-29 AS S89°35'28"E.
- 2.) THIS DRAWING REPRESENTS A SKETCH OF DESCRIPTION AND IS NOT A BOUNDARY SURVEY.
- 3.) NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: **CONSOR ENGINEERS, LLC**

DATE	11/19/2020	REVISIONS
SCALE	1" = 200'	
SECTION	11	
TWP.	25 S., RNG. 29 E.	
JOB NO.	20-053	SHEET 1 OF 2

**JOHNSTON'S
SURVEYING INC.**

900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

 11/20/20
RICHARD D. BROWN, P.S.M. #5700 (DATE)
NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.



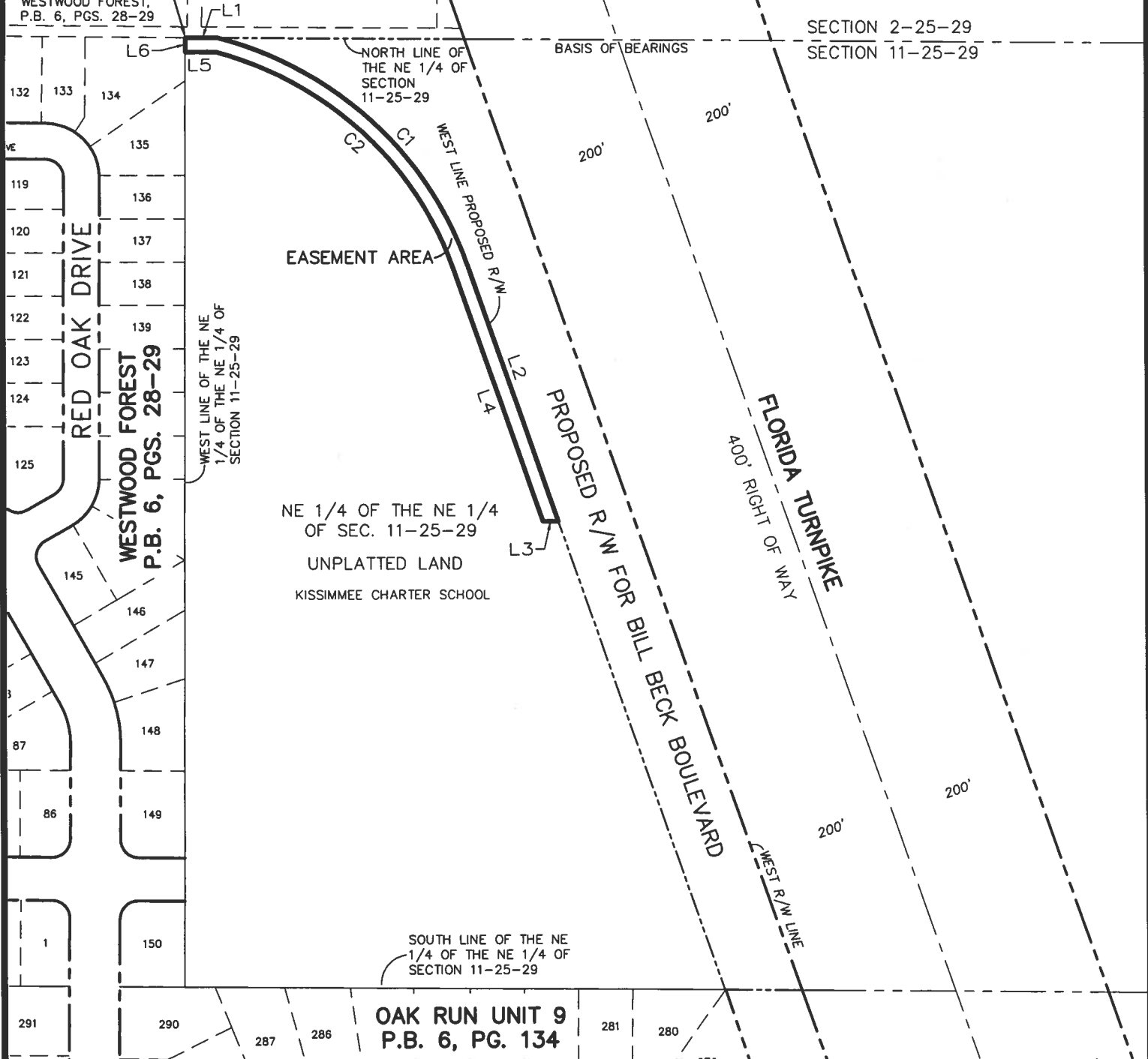
SKETCH OF DESCRIPTION TWA & KUA EASEMENT

SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION

SCALE: 1" = 200'

LOT 4 LOT 5
MARTHA A. BOICES SUBDIVISION
P.B. 1, PG. 84

P.O.B.
NE CORNER LOT 134,
WESTWOOD FOREST,
P.B. 6, PGS. 28-29



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S89°35'28"E	45.38'
L2	S19°19'50"E	376.41'
L3	N89°41'52"W	21.23'
L4	N19°19'50"W	369.27'
L5	N89°59'51"W	42.75'
L6	N00°12'12"E	20.29'

EASEMENT AREA

NE 1/4 OF THE NE 1/4
OF SEC. 11-25-29

UNPLATTED LAND

KISSIMMEE CHARTER SCHOOL

SOUTH LINE OF THE NE
1/4 OF THE NE 1/4 OF
SECTION 11-25-29

OAK RUN UNIT 9
P.B. 6, PG. 134

CURVE TABLE

CURVE #	RADIUS	DELTA	LENGTH	CHD. BEARING	CHORD LENGTH
C1	495.67'	56°08'30"	485.69'	S47°24'05"E	466.49'
C2	475.67'	55°51'12"	463.69'	N47°15'26"W	445.55'

JOHNSTON'S
SURVEYING INC.

900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 2 OF 2

ITEM 7.G**AUTHORIZATION TO ACCEPT 2021-2022 VICTIMS OF CRIME ACT (VOCA) GRANT FUNDING****Request**

Approval to accept the U.S. Department of Justice (DOJ) 2021-22 Victims of Crime Act (VOCA) Grant from the State of Florida, Office of the Attorney General, Bureau of Advocacy and Grants Management, in the amount of \$85,253.

Explanation

The City of Kissimmee has been notified by the State of Florida, Office of the Attorney General, Bureau of Advocacy and Grants Management, that it has been awarded the U.S. Department of Justice 2020-2021 Victims of Crime Act (VOCA) Grant. The approved award amount is \$85,253. This award amount includes \$2,500 for training and \$10,000 for operating costs for the VOCA program. The grant no longer requires any local matching funds from the Police Department's General Fund salaries and benefits accounts.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
11400334 334200	VOCA22	Increase	\$85,253	
11430401 501212	VOCA22	Increase	\$55,443	
11430401 502121	VOCA22	Increase	\$2,837	
11430401 502323	VOCA22	Increase	\$12,878	
11430401 502424	VOCA22	Increase	\$1,595	
11430401 505252	VOCA22	Increase	\$10,000	
11430401 505555	VOCA22	Increase	\$2,500	

Financial Summary:

Adequate monies will be available in the VOCA Grant Fund upon receipt of the DOJ funds.

Recommendation

Staff recommends the acceptance of the 2021-2022 Victims of Crime Act (VOCA) Grant for \$85,253 and to amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police
Presenter:

Attachment(s):

1. VOCA-2021-City of Kissimmee Police -00575 - signed

FY 2021/2022
(GRANT PERIOD October 1, 2021 through September 30, 2022)

AGREEMENT BETWEEN THE STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL

AND

Kissimmee Police Department

GRANT NO: VOCA-2021-City of Kissimmee Police -00575

THIS AGREEMENT is entered into in the City of Tallahassee, Leon County, Florida by and between the State of Florida, Department of Legal Affairs, Office of the Attorney General (OAG), the pass-through agency for the Victims of Crime Act (VOCA), Catalog of Federal Domestic Assistance (CFDA) Number - 16.575, hereafter referred to as “the OAG,” an agency of the state of Florida, with headquarters located at PL-01, The Capitol, Tallahassee, Florida 32399-1050, and the **Kissimmee Police Department**, hereafter referred to as “the Provider,” and jointly referred to as “the Parties.” The parties hereto mutually agree as follows:

ARTICLE 1. ENGAGEMENT OF THE PROVIDER

The OAG engages the Provider to perform services as specified in this Agreement. All services are to be performed solely by the Provider and may not be subcontracted or assigned without prior written consent of the OAG. The consent of the OAG does not vest any rights in the subcontractor or create any obligation on behalf of the OAG to the subcontractor. All subcontract agreements will contain a disclosure to this effect.

This Agreement will be performed in accordance with the rules implementing the provisions of VOCA, 34 U.S.C. § 20103, Crime Control and Law Enforcement, 28 C.F.R. §§ 94.101 through 94.122, the federal government-wide grant rules as set forth in 2 C.F.R. § 200, et. seq., and the U.S. Department of Justice, (DOJ), Office of Justice Programs, DOJ Grants Financial Guide, (Financial Guide), incorporated herein by reference, and any other regulations or guidelines currently or subsequently required by the U.S. Department of Justice and State or Federal laws.

ARTICLE 2. SCOPE OF WORK

For the term of this Agreement, the Provider will maintain a victim services program that will be available to provide direct services to victims of crime who are identified by the Provider or are presented to the Provider, as specified in the approved Grant Application of the Provider for the Grant Period as approved by the OAG and incorporated herein by reference.

This Agreement will become effective on October 1, 2021, or on the date when this Agreement has been signed by all parties, whichever is later, and will end on September 30, 2022. No costs incurred by the Provider prior to the effective date of this Agreement will be reimbursed and the Provider is solely responsible for any such expenses.

ARTICLE 4. GRANT FUNDS

The Provider will not commingle grant funds (payments and reimbursements made under this Agreement) with other personal or business accounts. The U.S. Department of Justice, DOJ Grants Financial Guide does not require physical segregation of cash deposits or the establishment of any eligibility requirements for funds which are provided to a Provider. The Provider's accounting systems must ensure grant funds are not commingled with funds on either a program-by-program or a project-by-project basis. Grant funds specifically budgeted and received for one project may not be used to support another. Where the Provider's existing accounting system cannot comply with this requirement, the Provider will establish an additional accounting system to provide adequate grant fund accountability for each project.

In accordance with the provisions of section 287.0582, Florida Statutes, if the terms of this Agreement and reimbursement contemplated by this Agreement extend beyond the current fiscal year, the OAG's performance and obligation to reimburse under this Agreement are contingent upon an annual appropriation and spending authority by the Florida Legislature. In addition, the OAG's performance and obligation to reimburse under this Agreement is contingent upon the OAG's Victims of Crime Act award, as funded through the U.S. Department of Justice, Office for Victims of Crime formula grant program.

ARTICLE 5. FINANCIAL CONSEQUENCES

In accordance with section 215.971, Florida Statutes, provisions specifying the financial consequences that apply if the Provider fails to perform the minimum level of service required by this Agreement are set forth in this paragraph. The Provider will be held responsible for maintaining a victim services program that will be available to provide direct services to victims of crime who are identified by the Provider or are presented to the Provider, and meeting the deliverables and the performance standards as outlined in the current year VOCA Grant Application and approved by the OAG, included within the OAG E-Grants Management System, and incorporated herein by reference in the approved application, unless otherwise modified as approved by the OAG in writing. If the Provider does not maintain a victim services program that will be available to provide direct services to victims of crime as outlined in the approved application without an approved justification, the OAG may impose a corrective action plan and will reduce the final payment for the grant period under this Agreement by five percent of the total award amount listed in Article 11. Additionally, failure of Provider to comply with all provisions of this agreement, including but not limited to compliance with audits, maintenance of documentation, monitoring, and report submissions will result in the withholding of payments until such issues are resolved as determined by the OAG. The provisions in this Article do not limit the OAG's rights under the law with regard to breach of this agreement or specified termination provisions.

ARTICLE 6. REGISTRATION REQUIREMENTS

Prior to execution of this Agreement, the Provider will be registered electronically with the State of Florida at MyFloridaMarketPlace.com. If the parties agree that exigent circumstances exist that would prevent such registration from taking place prior to execution of this Agreement, then the Provider will register within 21 days from execution. The online registration can be completed at:

<http://dms.myflorida.com/dms/purchasing/myfloridamarketplace>

The Provider will comply with the applicable requirements regarding registration with the System for Award Management (SAM) (or with a successor government-wide system officially designated by the Federal Office of Management and Budget and the DOJ's Office of Justice Programs), and to acquire and provide a Data Universal Numbering System (DUNS) number. The Provider will comply with applicable restrictions on subcontractors that do not acquire and provide a DUNS number. The details of Provider obligations are posted on the Office of Justice Programs' website at <https://www.ojp.gov/funding> (Award condition: Registration with the System for Award Management and Universal Identifier Requirements), and are incorporated by reference. This special condition does not apply to the Provider who is an individual and received the grant award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

ARTICLE 7. W-9 REQUIREMENT

The State of Florida Department of Financial Services requires that vendors have a verified Substitute Form W-9 on file to avoid delays in payments. Information on how to register and complete your Substitute Form W-9 can be found at <http://flvendor.myfloridacfo.com/>. The Vendor Management Section can also be reached at (850) 413-5519.

ARTICLE 8. E-GRANT SYSTEM REQUIREMENT

The PROVIDER's administrator has the authority to grant access to the E-Grant system to the PROVIDER'S employees. The PROVIDER will immediately remove access to the E-Grants system when an employee is no longer employed at the PROVIDER's agency or when an employee's access is no longer necessary to perform their job duties at the PROVIDER's agency. The PROVIDER will perform quarterly checks to ensure that only authorized employees have access to the E-Grant system and will report quarterly to the OAG their compliance with this provision.

ARTICLE 9. AUTHORIZED EXPENDITURES

Only expenditures which are detailed in the approved budget of the grant application, a revised budget, or an amended budget approved by the OAG are eligible for reimbursement with grant funds. Any requested modification to the budget must be submitted by the Provider in writing to the OAG and will require prior approval by the OAG. Budget modification approval is at the sole discretion of the OAG. Any grant funds reimbursed under this Agreement must be used in accordance with the rules implementing the provisions of VOCA, 34 U.S.C. § 20103, Crime Control and Law Enforcement, 28 C.F.R. §§94.101 through 94.122, the federal government-wide grant rules as set forth in the 2 C.F.R. § 200, and the U.S. Department of Justice, (DOJ), Office of Justice Programs, DOJ Grants Financial Guide, (Financial Guide), incorporated herein by reference, and any other regulations or guidelines currently or subsequently required by the U.S. Department of Justice and State or Federal laws. Expenditures for the acquisition and maintenance of telephones and equipment will be proportional to the percentage of VOCA grant funded staff who utilize the telephones and equipment, as

Grant funds cannot be used as a revenue generating source and crime victims cannot be charged either directly or indirectly for services reimbursed with grant funds. Third party payers such as insurance companies, victim compensation, Medicare or Medicaid may not be billed for services provided by grant funded personnel to clients. Grant funds must be used to provide services to all crime victims, regardless of their financial resources or availability of insurance or third-party reimbursements. Travel expenses will be reimbursed with grant funds only in accordance with section 112.061, Florida Statutes.

Expenditures of state financial assistance must be in compliance with all laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Florida Reference Guide for State Expenditures.

Only allowable costs resulting from obligations incurred during the term of this Agreement are eligible for reimbursement, and any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the OAG. Any funds paid in excess of the amount to which the Provider is entitled under the terms of this Agreement must be refunded to the OAG.

The Provider will reimburse the OAG for all unauthorized expenditures and the Provider will not use grant funds for any expenditures made by the Provider prior to the execution of this Agreement or after the termination date of this Agreement. If the Provider is a unit of local or state government, the Provider must follow the written purchasing procedures of that governmental agency or unit. If the Provider is a non-profit organization, the Provider will obtain a minimum of three written quotes for all single item grant-related purchases equal to or in excess of \$2,500 unless it is documented that the vendor is a sole source supplier. The Provider will use the lowest quote for the purchase.

The Provider will not use any federal funds (including grant funds), either directly or indirectly, in support of any contract or subaward to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of the U.S. Department of Justice, Office of Justice Programs.

The Provider must report suspected fraud, waste and abuse to the OAG's Office of the Inspector General at 850-414-3300.

ARTICLE 10. PROGRAM INCOME

The Provider will provide services to crime victims, at no charge, through the VOCA grant funded project. Upon request, the Provider will provide the OAG with financial records and internal documentation regarding the collection and disposition of program income, including, but not limited to, Victim Compensation, insurance, Medicare, Medicaid, restitution and direct client fees.

ARTICLE 11. AMOUNT OF FUNDS

The OAG will reimburse the Provider for contractual services or availability to provide services for the entire time of

performance, as set forth in Article 3 of this Agreement, and completed in accordance with the terms and conditions of this Agreement. The total sum of monies available for reimbursement to the Provider for services provided will not exceed \$85,253.00.

“Availability to Provide Services” is defined as maintaining sufficient capacity to assist victims during the Provider’s business hours throughout the Agreement term. Provider’s business hours should be set during standard business work hours, which are between 8:00 a.m. to 6:00 p.m. Monday through Friday, unless otherwise approved as alternative standard business work hours by the OAG. Employee leave earned under this grant period is reimbursable; however, the Provider must continue to maintain sufficient capacity to assist victims.

“Contractual Services” are defined as those specified services established within the OAG approved budget for which the Provider is to be paid upon completion at the set rate also established within the OAG approved budget, as authorized expenditures eligible for payment, or reimbursement pursuant to ARTICLE 9, AUTHORIZED EXPENDITURES, of this Agreement.

ARTICLE 12. METHOD OF PAYMENT

Payment for services performed under this Agreement will be issued in accordance with the provisions of section 215.422, Florida Statutes. The OAG will have 20 days from the receipt of any invoice for the approval and inspection of goods or services.

All required performance reports must be completed by the Provider and received by the OAG to document the provision of the project deliverables. Processing of reimbursement of a monthly invoice is contingent upon timely OAG receipt of performance reports, subject to approval by the OAG of the level of service provided during the invoiced period, and approval by the OAG of all required performance reports. The Provider will provide all performance reports on a quarterly and annual basis unless otherwise requested by the OAG. The quarterly reports for quarters ending December, March, and June must be submitted by the Provider to the OAG by the 15th day of the month immediately following the end of the quarter.

Except for the monthly invoices for December, March and June, each monthly invoice and all required supporting documentation, including a Certificate of Availability, must be submitted by the Provider to the OAG by the last day of the month immediately following the month for which reimbursement is requested, unless otherwise approved by the OAG in writing. The monthly invoices for December, March and June and all required supporting documentation, including a Certificate of Availability, must be submitted by the Provider to the OAG by the 15th day of the month immediately following the month for which reimbursement is requested, unless otherwise approved by the OAG in writing. The Provider will maintain appropriate documentation of all costs for which reimbursement is sought on the invoice. The OAG may require any appropriate documentation of expenditures prior to approval of the invoice and may withhold reimbursement if services are not satisfactorily completed or if the documentation is not satisfactory. The final invoice and final performance reports are due to the OAG no later than the last day of the month immediately following the cancellation, expiration, or termination of this Agreement.

If the Provider submits an invoice that does not accurately reflect the costs associated for that month, the correct costs must be submitted on the next monthly invoice or forfeit reimbursement from the grant for those particular costs. The OAG will not accept any corrected invoices that are not received within this timeframe. If complete and correctly documented invoices are not received within these time frames, all right to reimbursement may be forfeited, the OAG may not honor any subsequent requests for payment.

Any reimbursement due or any approval necessary under the terms of this Agreement will be withheld until all evaluation, financial and program reports due from the Provider, and necessary adjustments thereto, have been approved by the OAG. The Provider is required to inform the OAG if they are being investigated by any governmental agency for financial, programmatic, or other issues. If it comes to the attention of the OAG that the Provider is being investigated, all pending requests for reimbursement may not be processed until the matter is resolved to the satisfaction of the OAG.

The Provider will maintain and timely submit such progress, fiscal, inventory, and other reports as the OAG may require pertaining to this grant.

The Provider is required to match the grant award as required in the rules implementing the Federal Victims of Crime Act. Match contributions equal to 20 percent (cash or in-kind) of the total cost of each VOCA project (VOCA grant funds plus match contributions) must be reported monthly to the OAG. All funds designated as match contributions are restricted in the same manner and to be expended for the same uses as the VOCA victim assistance grant funds and must be expended within the grant period. Unless otherwise approved by the OAG, match contributions must be reported on a monthly basis in an amount consistent with the amount of funding requested for reimbursement.

ARTICLE 13. VENDOR OMBUDSMAN

Pursuant to section 215.422(7), Florida Statutes, the Florida Department of Financial Services has established a Vendor Ombudsman, whose duties and responsibilities are to act as an advocate for vendors who may have problems obtaining timely payments from state agencies. The Vendor Ombudsman may be reached at (850) 413-5516.

ARTICLE 14. LIABILITY AND ACCOUNTABILITY

The Provider, if a non-profit entity, will provide continuous and adequate director, officer, and employee liability insurance coverage against any personal liability or accountability by reason of actions taken while acting within the scope of their authority during the existence of this Agreement and any renewal and extension thereof. Such coverage may be provided by a self-insurance program established and operating under the laws of the state of Florida.

ARTICLE 15. INDEPENDENT CONTRACTOR

The Provider is an independent contractor and not an officer, employee, agent, servant, joint venture, or partner of the state of Florida, except where the Provider is a state Agency. Neither the Provider nor its agents, employees, subcontractors or assignees will represent to others that the Provider has the authority to bind the OAG. This Agreement does not create any right to any state retirement, leave or other benefits applicable to state of Florida personnel as a result of

the Provider performing its duties or obligations under this Agreement. The Provider will take such actions as may be necessary to ensure that each subcontractor of the Provider will be deemed an independent contractor and will not be considered or permitted to be an officer, employee, agent, servant, joint venturer, or partner of the state of Florida. The OAG will not furnish support services (e.g., office space, office supplies, telephone service, and administrative support) to the Provider, or its subcontractor or assignee, unless specifically agreed to in writing by the OAG.

All deductions for social security, withholding taxes, income taxes, contributions to unemployment compensation funds and all necessary insurance for the Provider, the Provider's officers, employees, agents, subcontractors, or assignees will be the sole responsibility of the Provider.

ARTICLE 16. DOCUMENTATION, RECORD RETENTION

The Provider will maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of grant funds.

The Provider will maintain a file for inspection by the OAG or its designee, Chief Financial Officer, Auditor General, or U.S. Department of Justice that contains written invoices for all fees, or other compensation for services and expenses, in detail sufficient for a proper pre-audit and post-audit. This includes the nature of the services performed or expenses incurred, the identity of any persons who performed the services or incurred the expenses, the daily time and attendance records and the amount of time expended in performing the services (including the day on which the services were performed), and if expenses were incurred, a detailed itemization of such expenses. All documentation, including audit working papers, will be maintained at the office of the Provider for a period of five years from the termination date of this Agreement, or until any audit has been completed and any findings have been resolved, whichever is later.

The Provider will give authorized representatives of the OAG the right to access, receive and examine all records, books, papers, case files, documents, goods and services related to the grant funds. The Provider, by signing this Agreement specifically authorizes the OAG to receive and review any record reasonably related to the purpose of the grant as authorized in the original approved grant application and or the amendments thereto. Failure to provide documentation as requested by the OAG under the provisions of this Agreement will result in either the termination of the agreement or suspension of further reimbursements to the Provider until all requested documentation has been received, reviewed, and the costs are approved for reimbursement by the OAG.

ARTICLE 17. PUBLIC RECORDS

The Provider will comply with Chapter 119, Florida Statutes, Florida's public record law. The Provider will keep and maintain public records required by the OAG to perform all services required under this Agreement. A request to inspect or copy public records relating to this Agreement must be made directly to the OAG. If the OAG does not possess the requested records, the OAG will immediately notify the Provider of the request. Upon request by the OAG to inspect or copy public records relating to this Agreement, the Provider will provide the OAG with a copy of the requested records at no cost to the OAG, or allow the records to be inspected or copied by the member of the public

making the records request at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Provider must ensure that in allowing public access to all documents, papers, letters, or other materials made or received in conjunction with this Agreement, those records that are exempt or confidential and exempt from public records disclosure requirements by operation of section 119.071, Florida Statutes or Chapter 119, Florida Statutes, are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Provider does not transfer the records to the OAG.

If the Provider fails to provide the public records to the OAG within a reasonable time, it may be subject to penalties under section 119.10, Florida Statutes, as well as unilateral cancellation of this Agreement by the OAG. In the event the Provider's business closes or the Provider is permanently unable to perform under this Agreement, the Provider will electronically transfer, at no cost, all public records to the OAG upon becoming aware of any impending closure or event that renders the Provider unable to perform said services. Upon completion of this Agreement, the Provider will keep and maintain public records required by the OAG to perform the services to be provided in the scope of this Agreement, or electronically transfer in a file format compatible with the information technology systems of the OAG, at no cost to the OAG, all public records in possession of the Provider. If the Provider transfers all public records to the OAG upon completion or termination of the Agreement, the Provider will destroy all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the Agreement, it must meet all applicable requirements for retaining public records, consistent with the state of Florida's records retention schedule. All public records stored electronically must be provided to the OAG, upon request of its Custodian of Public Records, at no cost to the OAG, in a format compatible with the information technology systems of the OAG. The OAG may unilaterally terminate this Agreement if the Provider refuses to allow access to all public records made or maintained by the Provider in conjunction with this Agreement, unless the records are exempt from section 24(a) of Art. I, Florida State Constitution, and sections 119.07(1) or 960.15, Florida Statutes.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-414-3634, PublicRecordsRequest@myfloridalegal.com, OFFICE OF THE ATTORNEY GENERAL, PL-01, THE CAPITOL, TALLAHASSEE, FL 32399-1050.

ARTICLE 18. PROPERTY

The Provider will be responsible for the proper care and custody of all property purchased with grant funds and agrees not to sell, transfer, encumber, or otherwise dispose of property acquired with grant funds without the written permission of the OAG. If the Provider is no longer a grant funds recipient, all property acquired by grant funds will be subject to the provisions of the Financial Guide.

ARTICLE 19. AUDITS; COMPLIANCE WITH THE INSPECTOR GENERAL

Pursuant to section 20.055, Florida Statutes, the Provider, and any subcontractor to the Provider understand and will comply with their duty to cooperate with the Inspector General in any investigations, audit inspection or review.

The administration of funds disbursed by the OAG to the Provider may be subject to audits and or monitoring by the OAG, as described in this section.

Title 2 C.F.R. Part 2, Subpart A, is applicable if the Provider is a non-federal entity, meaning a state, local government, Indian tribe, institution of higher learning, or nonprofit organization that carries out a federal award as a recipient or subrecipient, as defined in that Part.

1. In the event the Provider expends \$750,000 or more during the non-federal entity's fiscal year in federal awards, it must have a single or program-specific audit conducted for that year in accordance with the provisions of federal government-wide grant rules as set forth in 2 C.F.R. § 200, et. seq. Article 11 to this Agreement indicates the amount of federal funds disbursed through the OAG by this Agreement. In determining the federal awards expended in its fiscal year, the Provider will take into account all sources of federal awards, including federal resources received from the OAG. The determination of amounts of federal awards expended should be in accordance with the guidelines established by federal government-wide grant rules as set forth in 2 C.F.R. § 200. An audit of the Provider conducted by the Auditor General in accordance with the 2 C.F.R. § 200.500, will meet the requirements of this part.
2. In connection with the audit requirements addressed in this part, the Provider will fulfill the requirements relative to auditee responsibilities as provided in 2 C.F.R. § 200.508.
3. In the event the Provider expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with 2 C.F.R. § 200.500, the cost of the audit must be reimbursed from non-federal funds (i.e., the cost of such an audit must be reimbursed from Provider resources obtained from other than federal entities), as mandated in 2 C.F.R. § 200.400.

ARTICLE 20. AUDIT REPORT SUBMISSION

Audit reports must be submitted no later than 150 days following cancellation, termination or expiration of this Agreement.

1. Copies of audit reports for audits conducted in accordance with the 2 C.F.R. § 200.500, and required by this Agreement will be submitted, when required by 2 C.F.R. § 200.512, by or on behalf of the Provider directly to the following:
 - A. Office of the Attorney General
Bureau of Advocacy and Grants Management
PL-01, The Capitol
Tallahassee, Florida 32399-1050
2. Any reports, management letters, or other information required to be submitted to the OAG pursuant to this Agreement will be submitted timely in accordance with federal government-wide grant rules as set forth in 2 C.F.R. § 200, et. seq., as applicable.
3. Providers should indicate the date the financial reporting package was delivered in correspondence accompanying the financial reporting package.

ARTICLE 21. MONITORING

In addition to reviews of audits conducted in accordance with 2 C.F.R. § 200.500, the Provider will comply and cooperate with any monitoring procedures and processes and additional audits deemed appropriate by the OAG, including but not limited to on-site visits. The Provider will also comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the OAG or its designee, Chief Financial Officer, Auditor General or the U.S. Department of Justice.

The Provider may not accept duplicate funding for any cost, position, service or deliverable funded by the OAG. Duplicative funding is defined as more than 100 percent payment from all funding sources for any cost, position, service or deliverable. If there are multiple funding sources and a program is funded by the OAG, the OAG or its designee has the right to review all documents related to those funding sources to determine whether duplicative funding is an issue. If duplicate funding is found, this Agreement may be suspended, terminated or both while the extent of the overpayment is determined. Failure to comply with state or federal law, and the U.S. Department of Justice Programs, Financial Guide, may also result in the suspension, termination or both of this Agreement while the extent of the overpayment is determined. Absent fraud, in the event that there has been an overpayment to the Provider for any reason, if the amount of the overpayment cannot be determined to a reasonable degree of certainty, as determined in the sole discretion of the OAG, the Provider will reimburse to the OAG one half of the monies previously paid to the Provider for that line item for the grant year in question.

ARTICLE 22. RETURN OF FUNDS

The Provider will return to the OAG any overpayments made to the Provider for unearned income or disallowed items pursuant to the terms and conditions of this Agreement. In the event the Provider or any outside accountant or auditor determines that an overpayment has been made, the Provider will immediately return to the OAG such overpayment without prior notification from the OAG. In the event the OAG discovers that an overpayment has been made, the contract manager, on behalf of the OAG, will notify the Provider and the Provider will forthwith return the funds to the OAG. Should the Provider fail to immediately reimburse the OAG for any overpayment, the Provider will be charged interest at the rate in effect on the date of the overpayment, as determined by the State of Florida, Chief Financial Officer, pursuant to Chapter 55, Florida Statutes, on the amount of the overpayment or outstanding balance thereof. Interest will accrue from the date of the Provider's initial receipt of funds up to the date of reimbursement of said overpayment funds to the OAG.

ARTICLE 23. PUBLIC ENTITY CRIME

Pursuant to section 287.133, Florida Statutes, the following restrictions are placed on persons convicted of public entity crimes to transact business with the OAG: When a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, he/she may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. The Provider certifies that neither it nor any affiliate has been placed on such convicted vendor list and will notify the OAG within five days of its, or any of its affiliate's, placement thereon.

ARTICLE 24. GRATUITIES

The Provider will not offer or give any gift or any form of compensation to any OAG employee. Page 173 of 622
As part of the consideration for this Agreement, the parties intend that this provision will survive this Agreement for a period of two years. In addition to any other remedies available to the OAG, any violation of this provision will result in referral of the Provider's name and description of the violation of this term to the Department of Management Services for the potential inclusion of the Provider's name on the suspended vendors list for an appropriate period. The Provider will ensure that its subcontractors, if any, comply with these provisions.

ARTICLE 25. PATENTS, COPYRIGHTS, AND ROYALTIES

The Provider agrees that if any discovery or invention arises or is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected herewith, the discovery or invention will be deemed transferred to and owned by the state of Florida. Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the state of Florida.

In the event that any books, manuals, films, or other copyrightable materials are produced, the Provider will identify all such materials to the OAG. The Provider does hereby assign to the OAG and its assigns or successors, all rights accruing under or in connection with performance under this Agreement, including the United States Copyright, all other literary rights, all rights to sell, transfer or assign the copyright, and all rights to secure copyrights anywhere in the world.

The Provider will indemnify and hold the OAG and its employees harmless from any claim or liability whatsoever, including costs and expenses, arising out of any copyrighted, patented, or unpatented invention, process, or article manufactured or used by the Provider in the performance of this Agreement. The Provider will indemnify and hold the OAG and its employees harmless from any claim against the OAG for infringement of patent, trademark, copyright or trade secrets. The OAG will provide prompt written notification of any such claim. During the pendency of any claim of infringement, the Provider may, at its option and expense, procure for the OAG, the right to continue use of, or to replace or modify the article to render it non-infringing. If the Provider uses any design, device, or materials covered by letters patent, or copyright, it is mutually agreed and understood without exception the compensation paid pursuant to this Agreement includes all royalties or costs arising from the use of such design, device, or materials in any way involved in the work contemplated by this Agreement.

Subcontracts must specify that all patent rights and copyrights are reserved to the state of Florida.

ARTICLE 26. INDEMNIFICATION AND ASSUMPTION OF LIABILITY

The Provider will be liable for and indemnify, defend, and hold the OAG, and all of its officers, agents, and employees, harmless from all claims, suits, judgments, or damages, including attorney's fees and costs, arising out of any act or omission or neglect by the Provider and its agents, employees and subcontractors during the performance or operation of this Agreement or any subsequent modifications or extensions thereof.

The Provider's evaluation or inability to evaluate its liability will not excuse the Provider's duty to defend and to indemnify the OAG within seven days after notice by the OAG. The Provider will pay all costs and fees including attorney's fees related to these obligations and their enforcement by the OAG. The OAG's failure to notify the Provider of a claim will not release the Provider from these duties. The Provider will not be liable for any claims, suits, judgments, or damages arising solely from the negligent acts of the OAG.

The Provider will assume all liability associated with providing services under the terms and conditions of this Agreement. This includes, but is not limited to, premises liability and any travel taken by any employee of Provider or any recipient of Provider's services.

NOTE: The indemnification provisions of this Article are not applicable to entities identified in section 768.28(2), Florida Statutes, and do not constitute a waiver of sovereign immunity, or increase the limited waiver of sovereign immunity specified in section 768.28, Florida Statutes.

ARTICLE 27. TERMINATION

This Agreement may be terminated by the OAG for any reason upon five days written notice via certified U.S. mail, hand delivery, or email to the Provider to the physical or email address provided by the Provider in the application.

In the event funds for payment pursuant to this Agreement become unavailable, the OAG may terminate this Agreement upon no less than 24 hours written notice to the Provider. The notice will be sent by a method of email, or by hand delivery with proof of delivery, to the representative of the Provider responsible for administration of the program. The OAG will be the final authority as to the availability and adequacy of funds.

In the event this Agreement is terminated by the OAG, the Provider will deliver documentation of ownership or title, if appropriate for all supplies, equipment and personal property purchased with grant funds to the OAG, within 30 days after termination of this Agreement. Any finished or unfinished documents, data, correspondence, reports and other products prepared by or for the Provider under this Agreement will be made available to and for the exclusive use of the OAG.

Notwithstanding the above, the Provider will not be relieved of liability to the OAG for damages sustained by the OAG by any termination by the OAG of this Agreement by the Provider. In the event this Agreement is terminated by the OAG, the Provider will be reimbursed for satisfactorily performed and documented services provided prior to the effective date of termination.

ARTICLE 28. AMENDMENTS

Modification of any provision of this Agreement must be mutually agreed upon by all parties and requires a written and fully executed amendment to this Agreement, except as provided for budget modifications submitted by the Provider in writing which have been previously approved by the OAG pursuant to the terms of ARTICLE 9, AUTHORIZED EXPENDITURES.

ARTICLE 29. NONDISCRIMINATION

Recipients of federal financial assistance must comply with applicable federal civil rights laws, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. §§ 10228(c) and 10221(a)); the Victims of Crime Act of 1984, as amended (34 U.S.C. § 20110(e)); The Juvenile Justice and Delinquency Prevention Act of 1974, as amended (34 U.S.C. § 11182(b)); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); and Exec. Order 13279 (67 Fed. Reg. 241).

Pursuant to applicable federal laws and Chapter 760, Florida Statutes, the Provider will not discriminate against any client or employee in the performance of this Agreement or against any applicant for employment because of age, race, religion, color, disability, national origin, marital status or sex. All contractors, subcontractors, sub-grantees, or others that the Provider engages to provide services or benefits to clients or employees in connection with any of its programs and activities will not discriminate against those clients or employees because of age, race, religion, color, disability,

The Provider must have policies and procedures in place for responding to complaints of discrimination that employees and beneficiaries file directly with the Provider. Information provided by the U.S. Department of Justice, Office of Justice Programs, to assist with policy and procedure development is available at <http://ojp.gov/about/offices/ocr.htm>.

In the event a federal or state court, or a federal or state administrative agency, makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, marital status or sex against the Provider, the Provider will forward a copy of the findings to the Office of Justice Programs, Office for Civil Rights (OCR), and the OAG.

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Safe Streets Act and Title VI of the Civil Rights Act of 1964, the Provider must take reasonable steps to ensure that LEP persons have meaningful access to its programs and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The Provider is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

In accordance with federal civil rights laws, the Provider will not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

All Providers must complete a review of the Office of Justice Programs, Office for Civil Rights training modules and confirm compliance with this requirement to the OAG through self-reporting by December 31, 2021. The training modules are available at <http://ojp.gov/about/ocr/assistance.htm>.

Pursuant to section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a response on a contract to provide any goods or services to a public entity; may not submit a response on a contract with a public entity for the construction or repair of a public building or public work; may not submit a response 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.

The Provider will notify the OAG if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of this Agreement.

The OCR issued an advisory document for federal grant recipients on the proper use of arrest and conviction records in making hiring decisions. See Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (June 2013), available at http://ojp.gov/about/ocr/pdfs/UseofConviction_Advisory.pdf. Recipients should be mindful that the misuse of arrest or conviction records to screen either applicants for employment or employees for retention or promotion may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination. If warranted, recipients should also incorporate an analysis of the use of arrest and conviction records in their Equal Employment Opportunity Plans.

The Provider will not use award funding to discriminate against students that are participating in (or benefiting from) programs that are funded by those same federal funds. As an example, provided by the Office for Victims of Crime, Office of Justice Programs, the Provider cannot use VOCA funding to treat a Catholic student differently than a non-Catholic student when both are applying for, or receiving benefits from, the VOCA program. This same protection also applies to the students' parents or legal guardians.

ARTICLE 31. ACKNOWLEDGMENTS

All publications, advertising or written descriptions of the sponsorship of the program will state: "This project was supported by Award No. VOCA-2021-City of Kissimmee Police -00575 awarded by the Office for Victims of Crime, Office of Justice Programs. Sponsored by (name of Provider) and the State of Florida."

The Provider is required to display a civil rights statement prominently on all publications, websites, posters and informational materials mentioning USDOJ programs in bold print and no smaller than the general text of the document. The full civil rights statement must be used whenever possible. Single page documents that do not have space for the full civil rights statement may contain a condensed version in a print size no smaller than the text used throughout the document. If the civil rights statement is missing on a publication, the statement must be included the next time the publication is revised or reprinted and printed copies of the statement must be attached to the current supply of the publication until the next revision is reprinted.

Full Civil Rights Statement: In accordance with federal law and U.S. Department of Justice policy, this organization is prohibited from discriminating on the basis of race, color, national origin, religion, sex, age, or disability. To file a complaint of discrimination, write the Florida Department of Legal Affairs, Federal Discrimination Complaint Coordinator, PL-01 The Capitol, Tallahassee, Florida, 32399-1050, or call 850-414-3300, or write Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531 or call 202-307-0690 (Voice) or 202-307-2027 (TDD/TYY) or <https://www.ojp.gov/program/civil-rights/filing-civil-rights-complaint>. Individuals who are hearing impaired or have speech disabilities may also contact OCR through the Federal Relay Service at 800-877-8339 (TTY), 877-877-8982 (Speech), or 800-845-6136 (Spanish).

Condensed Civil Rights Statement: The Kissimmee Police Department is an equal opportunity provider and employer.

The Provider is required to display the OAG's "Civil Rights Fact Sheet" at locations open to the public. The "Civil Rights Fact Sheet" will be made available to the Provider via the OAG E-Grants Management System.

ARTICLE 32. EMPLOYMENT

The employment of unauthorized aliens by the Provider is considered a violation of section 274A(a) of the Immigration and Nationality Act. If the Provider knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement. Any services performed by any such unauthorized aliens will not be paid.

In accordance with section 448.095 (2), Florida Statutes, the Contractor must register with and use the U.S. Department of Homeland Security's E-Verify system: <https://www.uscis.gov/e-verify/employers>, to verify the work authorization status of all new employees hired to perform services specified in the Purchase Order. Subcontractors must also be registered in the E-Verify system and provide the Contractor with an affidavit stating that the subcontractor

Page 177 of 622
does not employ, contract with, or subcontract with an unauthorized alien. The Contractor will maintain a copy of such affidavit for the duration of the contract. The OAG may request documentation of compliance with this provision at any time during the Contract term. The Contract may be subject to termination for failure to comply with the requirements set forth in this Article, as specified in section 448.095(2)(a), Florida Statutes.

ARTICLE 33. NO THIRD-PARTY RIGHTS

This Agreement and the rights and obligations created by it are intended for the sole benefit of the OAG and the Provider. No third party to this Agreement, including the victims served by the Provider, have any rights under this Agreement. No third party may rely upon this Agreement or the rights and representations created by it for any purpose.

ARTICLE 34. ADMINISTRATION OF AGREEMENT

All approvals referenced in this Agreement must be obtained from the parties' contract administrators or their designees. All notices must be given to the parties' contract administrators respectively.

The OAG's contract administrator is Christina F. Harris, Chief, Bureau of Advocacy and Grants Management. The Provider's contract administrator will be provided at the time of execution.

The parties will provide each other with written notification of any change in its designated representative for this Agreement. Such changes do not require a formal written amendment to this Agreement.

ARTICLE 35. CONTROLLING LAW AND VENUE

This Agreement will be governed by the laws of the state of Florida. All litigation arising under this Agreement will be instituted in the appropriate court of general jurisdiction in Leon County, Florida.

ARTICLE 36. ENTIRE AGREEMENT

This Agreement and the approved 2021-2022 grant application in the E-Grants Management System, embody the entire agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained herein. This Agreement supersedes all previous communications, representations or agreements on this same subject, verbal or written, between the parties.

There are no representations or statements that are relied upon by the parties that are not expressly set forth herein.

The Provider's signature below specifically acknowledges understanding of the fact that the privilege of obtaining a VOCA grant is not something this or any Provider is entitled to receive. This Agreement is for one-time funding only and will not exceed one federal fiscal year. There is absolutely no expectation or guarantee, implied or otherwise, the Provider will receive VOCA funding in the future. The OAG strongly encourages the Provider to secure funding from other sources if the Provider anticipates the program will continue beyond the current grant year. Each of the parties executing this Agreement have full authority to do so and have received all lawfully necessary approvals to enter into this Agreement.

IN WITNESS WHEREOF, the OFFICE OF THE ATTORNEY GENERAL and Kissimmee Police Department, have executed this agreement.

Jeffrey M O'Dell

Authorizing Official

Jeffrey M O'Dell

Print Name

Nov 19, 2021

Date

/s/ Richard H. Martin

OAG Authorizing Official

Richard H. Martin

Print Name

Sep 30, 2021

Date

Authorizing Official*

Print Name

Date

Authorizing Official*

Print Name

Date

FEID# of Provider

Flair Code

* Provided for use if multiple signatures are required by your organization.

Office of the Attorney General
Grant Award Project Summary

 Office of the Attorney General Division of Victim Services Bureau of Advocacy and Grants Management PL-01 The Capitol Tallahassee, Florida	Office of the Attorney General Victims of Crime Act Grant		2021-2022
Subrecipient Name and Address Kissimmee Police Department City of Kissimmee Police Department Kissimmee, Florida 34741-5463	OAG Grant Number VOCA-2021-City of Kissimmee Police -00575		
Subrecipient DUNS Number 070481952	Project Period: From 10/1/2021 To 9/30/2022		
Subrecipient IRS/Vendor/FEIN Number 596000348	Budget Period: From 10/1/2021 To 9/30/2022		
Project Title OVC FY 19 VOCA Victim Assistance Formula OVC FY 20 VOCA Victim Assistance Formula	Award Date 09/27/2021	Award is R&D (Y/N) No	
	Federal Indirect Cost Rate or De Minimis Rate		
Previous Award Amount \$0.00	Amount of this Award \$85,253.00	Total Award \$85,253.00	
Special Conditions The above grant project is approved subject to such conditions or limitations as are set forth in the Office of the Attorney General contract.			
Catalog of Domestic Federal Assistance (CFDA Number) 16.575 - Crime Victim Assistance			
Summary Description of Project This grant award provides funds from the Crime Victims Fund to enhance crime victim services in the State of Florida. Victims of Crime Act (VOCA) assistance funds are typically competitively awarded by the Office of the Attorney General to public agencies and/or local, not-for-profit organizations that provide direct services to crime victims.			
Federal Award Agency U.S. Department of Justice Office of Justice Programs Office for Victims of Crime	OVC Project Period 2018-2019: From 10/1/2017 to 9/30/2022 (pending) 2019-2020: From 10/1/2018 to 9/30/2022		
OVC Federal Award Number 2018-V2-GX-0018 - Awarded 08-09-2018 2019-V2-GX-0047 - Awarded 09-13-2019	OVC Total Award to OAG \$210,755,732 \$143,823,948		
OAG Staff Contact Christina Harris, Bureau Chief (850) 414-3380	Bureau Contact contact.voca@myfloridalegal.com (850) 414-3380		
Signature, OAG Authorizing Official, Date <i>/s/ Richard H. Martin</i> Sep 30, 2021	Signature, Agency Executive Director, Date <i>[Signature]</i> Nov 19, 2021		

ITEM 7.H**CHANGE ORDER NO.3 WITH GOMEZ CONSTRUCTION FOR THE SECURITY IMPROVEMENTS AT KISSIMMEE GATEWAY AIRPORT****Request**

Approval of Change Order No. 3 with Gomez Construction for the Airport Security Improvements Project in the amount of \$6,975.00 using project AP2103 funds.

Explanation

Change Order No.3 Kissimmee Airport Security Improvements will add an additional segment of chain link fence to the Airport Security Improvements Project. This added fencing will be located adjacent to the parcel the City recently acquired and annexed to the airport boundary. After land clearing activities were completed by City crews near the hangar, it was discovered that additional fencing is needed to secure the airfield area.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
47000381-381008	AP2103	Increase	6,975.00	6,975.00
47070106-506393	AP2103	Increase	6,975.00	6,975.00

Financial Summary:

Airport funds allocated in AP2103 will be used to cover this entire Change Order amount of \$6,975.00.

Recommendation

Staff recommends Commission approval of Change Order No. 3 with Gomez Construction for the Airport Security Improvements Project in the amount of \$6,975.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport
Presenter:

Attachment(s):

1. Gomez SOR 004 Added Fence

12/8/2021 4:23 PM

**Kissimmee Security Improvements
COR-003-R2**



Gomez Construction Company
749 Jackson Avenue
Winter Park, Florida 32788
407-628-4353 phone
407-645-2499 fax

December 8, 2021

Added Fence at Owner Request

Item	Description of the Item	Est Qty	Unit	Unit Cost	Total Cost
1	Below Foreman	1	LS	\$ -	\$ -
2		1	LS	\$ -	\$ -
3		1	LS	\$ -	\$ -
4		1	LS	\$ -	\$ -
5		1	LS	\$ -	\$ -
6		1	LS	\$ -	\$ -
7	GCC Subtotal			\$ -	\$ -
8	GCC 12% Mark-Up			\$ -	\$ -
9	Total GCC			\$ -	\$ -
11	All-Rite Fencing	1	LS	\$ 6,213.00	\$ 6,213.00
12		1	LS	\$ -	\$ -
13		1	LS	\$ -	\$ -
14		1	LS	\$ -	\$ -
15		1	LS	\$ -	\$ -
16		1	LS	\$ -	\$ -
17		1	LS	\$ -	\$ -
18	Subtotal Subcontractors			\$ -	\$ 6,213.00
19	GCC 10% Mark-Up			\$ -	\$ 621.30
20	Total Subcontractors			\$ -	\$ 6,834.30
21	Total GCC			\$ -	\$ -
22	Subtotal GCC & Subcontractors			\$ -	\$ 6,834.30
23	Builder's Risk			\$ -	\$ 25.98
24	GL Insurance			\$ -	\$ 61.51
25	Bond			\$ -	\$ 52.61
26	Grand Total			\$ -	\$ 6,974.40
27	MWBE Subcontractors			% of Contract	Subcontract Amount
28				0	\$ -
29				0	\$ -
30	Total Amount MWBE Subcontractors			0	\$ -
31	General Conditions				
32	Foreman	1.5	wks	\$ 1,500.00	\$ 2,250.00
33	Laborer	1	wks	\$ -	\$ -
34	Truck	1	mo	\$ -	\$ -
35	Telephone	1	wks	\$ -	\$ -
36	Dumpster	1	ea	\$ -	\$ -
37	Final Clean Up	1	sf	\$ -	\$ -
38	Total General Conditions			\$ -	\$ 2,250.00



*5115 Old Winter Garden Road
Orlando, Florida 32811
407-295-7093 Fax 407-292-8550*

Proposal

To: Gomez Construction Co
750 Jackson Ave
Winter Park FL 32789

Proposal # : 22635
Date: 12/02/2021

Attn: Steve Carrow

Description	Amount
Revised 12/7/2021 Kissimmee Airport Security Improvements - CO #5 Please process the following change order	
To add approx. 108 LF of 6' tall + 1' barbed wire 2 oz galvanized chain link fence and (3) 3" terminals with brace and truss with 12" x 42" line post footings and 18" x 42" terminal post footings. Posts to be set with approved P610 concrete formula. All approved F-162 pipe and framework. Fence constructed per approved plans and details. Removal of shrubs, trees, layout and fence removal by others. Add 8 hook ups and 4 stretches. Add 6 holes core drill 10"-12" holes.	6,213.00

Excludes: all invoicing services such as Textura, clearing, grading and staking of fence line.

This proposal is valid for 30 days. Please contact your salesperson to proceed with work.

Salesperson: Jeff Rowlen
jeff@allritefence.com

Non-Taxable Amount:	6,213.00
Taxable Amount:	0.00
Sales Tax:	0.00
Proposal Total:	\$6,213.00



ITEM 7.I

APPROVAL OF SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF KISSIMMEE AND REDFLEX TRAFFIC SYSTEMS, INC. AUTHORIZING A SHORT-TERM 90-DAY EXTENSION

Request

Approval of a second amendment to the agreement between the City and Redflex Traffic Systems, Inc authorizing a 90-day extension of the original contract.

Explanation

Through the enactment of the Mark Wendall Traffic Safety Act effective July 1, 2010 and codified at F.S. 316.0083, the State of Florida authorized the use of red light cameras at intersections for the issuance of traffic citations for failure to obey traffic control devices. On August 2, 2011, the City entered into an Agreement with Redflex Traffic Systems, Inc and entered into a First Amendment of the Agreement on August 30, 2016, extending it through December 31, 2021.

In late October, Red Flex was acquired by American Traffic Solutions, doing business as Verra Mobility. Staff began negotiating the contract with the new entity; however, negotiations will not be finalized before the current contract expiration date. Redflex has agreed to enter into a short-term ninety (90) day extension, with a new expiration date of March 31, 2022, to give the parties adequate time to address pricing, equipment and to finalize the new agreement for services.

Recommendation

Staff recommends approval of the second amendment of the original agreement with Redflex Traffic Systems Inc.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter:

Attachment(s):

1. Second Amendment Kissimmee, FL - 90 Day Extension (RF)

**SECOND AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF KISSIMMEE, FLORIDA AND
REDFLEX TRAFFIC SYSTEMS, INC. FOR TRAFFIC CAMERA SAFETY IMPROVEMENT
PROGRAM**

This SECOND Amendment (this "Amendment") is dated effective this ____ day of December 2021 and is entered into between the City of Kissimmee, Florida, a municipal corporation (the "City") and Redflex Traffic Systems, Inc. ("Redflex"), a Delaware corporation.

RECITALS

WHEREAS, Redflex and the City entered into an Agreement on August 2, 2011 (the "Original Agreement"), which was amended on August 30, 2016 (the "First Amendment), with the Original Agreement as amended by the First Amendment referred to collectively herein as the "Agreement"; and

WHEREAS, The City and Redflex mutually desire to extend the Agreement for a set period of time.

NOW THEREFORE, the City and Redflex hereby agree as set forth below:

TERMS AND CONDITIONS

1. The execution of this Amendment shall extend the term of the Agreement for an additional ninety (90) days from the current expiration date of December 31, 2021.
2. The provisions of the Agreement, as amended by this Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof. Except as expressly amended or modified by the terms of this Amendment, all terms of the Agreement shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.
3. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Amendment.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Amendment.

REDFLEX TRAFFIC SYSTEMS, INC.

Signature: _____

David Roberts, CEO

Date: _____

STATE OF Arizona
COUNTY OF Maricopa

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13th day of December, 2021, by (name of person) as (type of authority, e.g. officer, trustee, attorney in fact) for RED FLEX TRAFFIC SYSTEMS INC, who is personally known or produced (insert ID form) as identification.

Seal:



Signature of Notary Public

ATTEST:

CITY OF KISSIMMEE

Linda Hansell, City Clerk

Olga Gonzalez, Mayor - Commissioner

Approved as to form and legality,

City Attorney

ITEM 7.J

ACCEPTANCE OF ASSIGNMENT OF GROUND LEASE AGREEMENT WITH SKY WAY ENTERPRISES, INC.

Request

Approval of a ground lease agreement with Sky Way Enterprises, Inc., for 3031 Patrick Street, Kissimmee Gateway Airport.

Explanation

Sky Way Enterprises, Inc. operates a cargo aircraft maintenance operation at 3031 Patrick Street, formerly utilized by Kissimmee Aviation services A/K/A Kissimmee Jet Center. Sky Way desires to continue to operate aircraft maintenance solely on their own aircraft and has proposed to construct a new facility south of the current hangar.

The current hangar is scheduled to be demolished and removed in 2023 as part of an FAA funded taxiway extension project (funding to be applied for in 2022). The agreement will consist of a one-year term and continue month-to-month thereafter until the taxiway project begins or occupancy by Sky Way in the new hangar facility. A separate agreement will be developed and presented for the new proposed facility.

Recommendation

Staff recommends Commission approval of the ground lease agreement with Sky Way Enterprises, Inc., 3031 Patrick Street.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. SKY WAY ENTERPRISES LEASE
2. Skyway Exhibit A
3. EXHIBIT B

**KISSIMMEE GATEWAY AIRPORT
FIXED BASE OPERATOR'S LEASE AGREEMENT
SKY WAY ENTERPRISES, INC.**

THIS LEASE AGREEMENT (the “**AGREEMENT**”) is made this ____ day of December, 2021 between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, hereinafter referred to as “**Lessor**” or “**City**” and **SKY WAY ENTERPRISES, INC.**, a Florida Corporation, whose address is 1111 Coral Way, Coral Gables, Florida 33134 hereinafter referred to as “**Lessee**.” City and Lessee are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, City is the owner of certain improvements to real property located at 3031 Patrick Street, Kissimmee, Florida 34741, at the Kissimmee Gateway Airport, a municipal airport of the City of Kissimmee, Florida (the “**Airport**”); and

WHEREAS, the City desires to lease to Lessee, and the Lessee is desirous, willing and able to enter into a lease from Lessor to operate a fixed base operation maintenance facility, situated on land located at 3031 Patrick Street, Kissimmee Gateway Airport, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other able consideration, the Parties hereto agree as follows:

**PART ONE
DESCRIPTION OF LEASED PREMISES**

- A. **LEASED PREMISES**. Lessor leases to Lessee the premises (the “**Leased Premises**”) located at the Airport, and hereby incorporated by reference as **Exhibit A**, which consists of 119,500 square feet (2.74 acres) which includes 103,000 square feet of real property (the “**Leased Premises**”) and 16,500 square feet of hangar and office space (the “**Hangar**”).
- B. **CONDITION OF LEASED PREMISES**. Lessee accepts the Leased Premises and any improvements on, about, or associated with the Leased Premises “As Is, Where Is” and in their present condition. Lessee further warrants that the Leased Premises are suitable for Lessees proposed use described herein.
- C. **RE-ADJUSTMENT OF LEASED PREMISES**. This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the City and the United State of America, the State of Florida, or the County of Osceola, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or City funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to

occupy or use the Airport, or any part thereof, during time of war or national emergency.

In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, Lessee hereby consents to any and all such modifications and changes as may be reasonably required to the extent that such modifications and changes do not unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease. In the event that any such modifications or changes unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease, then Lessee shall have the option to terminate this Lease.

Notwithstanding the foregoing provisions of this Section C, in the event any such restrictions, agreements or modifications to this Lease increase the Annual Rent payable hereunder or materially and adversely affect the ability of Lessee to use the Leased Premises for the purposes permitted under this Lease, Lessee shall have the right to terminate this Lease by written notice to the City.

PART TWO TERM OF LEASE

- A. PRIMARY TERM. The term of this Lease shall be for a one (1) year period, with the period commencing on the first day of January 2022 and ending on the last day of December 2022. The City of Kissimmee expects to receive a Federal Aviation Administration grant to extend Taxiway "E" and demolish and remove the Hangar (**Exhibit B**) in 2023.
- B. RENEWAL OPTION. Provided Lessee is not in default of the Agreement, Lessee is hereby granted use of the Leased Premises and Hangar on a month-to-month basis.
- C. HOLDING OVER. In the event Lessee shall continue to occupy the Leased Premises beyond the term of this Agreement after Lessor gives written notice to vacate, such holding over shall not constitute a renewal of this Agreement but shall be a tenancy of sufferance only. The amount of rent to be paid by Lessee during this hold over period shall equal two (2) times the normal monthly rent as stated in this agreement or the maximum amount allowed by law, whichever is greater.

PART THREE RENT

- A. RENT. The initial net rent under this Lease for the Leased Premises is **\$44,310.00** per year, payable monthly ("Annual Rent") plus sales tax and any other applicable tax including property tax. The following sum shall be payable monthly, in advance, in the amount of **\$3,692.50** ("Monthly Rent") plus said taxes. Payment of rent will commence on January 1, 2022.

Monthly Rent will be due on the first day of every month ("Due Date") and shall be deemed

delinquent if not received by the Lessor on or before the tenth day of every month. The initial net Annual Rent and Monthly Rent shall be subject to adjustment as enumerated in Part Three of this Lease.

- B. RENT ADJUSTMENTS. Lessor and Lessee recognize and agree that the purchasing power of the United States Dollar is evidenced by the Consumer Price Index – Urban Wage Earners and Clerical Workers (“Price Index”) as published by the United States Department of Labor’s Bureau of Labor Statistics. Lessor and Lessee also recognize that local market trends in the Central Florida and the Kissimmee area evolve over time and greatly influence the current market values of leaseholds located at the Kissimmee Gateway Airport.

The parties agree that beginning three (3) years from the Effective Date and every year thereafter, with the exception of every fifth (5th) year as set forth below, (“CPI Adjustment Year”), the parties hereto will compare the price index for said year with the price index for 2022 and the Annual Rent payments shall be recalculated and increased in the same proportion as said price index has increased in the same proportion as said price index has increased when compared with the price index for January 2022, but shall never decrease.

Notwithstanding the above, beginning five (5) years from the Effective Date and every fifth year thereafter (“Appraisal Year”) the City may obtain an appraisal of the Leased Premises from a MAI certified appraiser to establish the then Fair Market Value, as defined below, of the Leased Premises. If the City deems an appraisal is appropriate due to market conditions, the City shall notify the Lessee of their intention to invoke the right of obtaining an appraisal, sixty days prior to seeking the appraisal. Such determination shall be at the sole discretion of the City. On each Appraisal Year, in lieu of the CPI Adjustment, the Annual Rent shall increase, to the Fair Market Value, as determined by the appraisal. The Fair Market Value of the Leased Premises (but excluding Lessee improvements constructed after the Effective Date) shall be determined by appraisal where the appraiser determines the market supported rental rate per square foot of Leased Premises and improvements thereon, taking into account the land and all improvements thereon within thirty (30) days of the date on which an adjustment to Annual Rent becomes effective and shall be based on the value of comparable property in the Orlando Metropolitan area, and shall not be restricted to the consideration of properties located at the Airport (the “Fair Market Value”). The City shall select a qualified appraiser (“Appraiser”) and notify Lessee of such selection, and the Appraiser shall proceed to determine the then Fair Market Value and shall provide Lessee and City with a copy of such appraisal.

The City shall pay the fees and expenses of each appraiser appointed by such party. Any appraiser designated to serve in accordance with the provisions of this Agreement shall be designated as an “MAI” appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise commercial real estate, shall be disinterested and shall have been actively engaged in the appraisal of real estate for a period of not less than five (5) years immediately preceding his appointment.

- C. RENT CAPS. In no event, however, shall the Rent Adjustment be more than ten percent (10%) for a rent adjustment.

- D. PAYMENT OF SALES TAX. Lessee shall be liable at its sole cost and expense, and the City shall have no liability for, any sales, use or similar taxes with respect to all rent and other payments made by Lessee in accordance with the provisions of this Agreement. Lessee shall indemnify, defend, and hold City completely harmless from and against any liability, including any interest and penalties, which might arise in connection with any such taxes.

PART FOUR PAYMENTS

- A. TIME AND PLACE OF PAYMENT. All payments of rents, fee, taxes, and other charges are to be made at the Kissimmee Gateway Airport, City of Kissimmee, 401 Dyer Blvd, Kissimmee, FL 34741, or such other place Lessor may direct Lessee in writing.
- B. DELINQUENT PAYMENT OF RENT AND FEES. If rent or fees are not timely paid, then the Lessee shall pay to Lessor a penalty of 5% of the amount due commencing sixteen (16) days after the DUE DATE. Lessor shall charge no penalty upon that portion of any debt that, in good faith, is in dispute or charge a penalty that exceeds the then amount permitted under Florida law. All late fees are to be paid to Lessor within 30 days of the initial date of accrual.

PART FIVE PRIVILEGES

- A. USE. The Leased Premises shall be used solely for the following Fixed Base Operator Activities as defined in the Minimum Aeronautical Service Standards for Aeronautical Tenants at the Kissimmee Gateway Airport as amended from time to time and incorporated by reference into this Lease:

Category "D" – Airframe and Power Plant Repair

Category "E" – Avionics, Instrument and/or Propeller Repair Service

The Leased Premises may be used for private/special events, offices, storage and used ancillary to Lessee's business provided they are not disruptive to airport operations and coordinated with the Director of Aviation ("**Director**"). The Leased Premises may not be used for any other purposes unless approved in writing by the Lessor.

- B. PROHIBITED USES. The Lessee shall not use or permit the use of the Leased Premises or any part thereof for any purpose or purposes other than those set forth in PART FIVE (A) above, unless approved in writing by the Lessor such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall not commit or suffer to be committed any waste in or upon the Leased Premises or maintain any public or private nuisance, nor, without limiting the generality of the foregoing, shall the Lessee use or permit the use of the Leased Premises for any illegal, improper, immoral, or unlawful purposes.

- C. INGRESS AND EGRESS. Lessee shall have at all times the full and free right of ingress and egress. Such right also extends to persons or organizations supplying materials or furnishing services to Lessee, as well as employees, customers, guest, and other invitees, who include vehicles, machinery, and equipment reasonably required by such persons or organizations.

PART SIX OBLIGATIONS OF AGREEMENT

- A. NET LEASE. The use and occupancy of the Leased Premises by Lessee shall be without cost or expense to Lessor. This Agreement shall be without cost to the City except for the City's obligations set forth or specifically provided elsewhere herein. The Lessee accepts the Leased Premises in its "As Is, Where Is" condition except with regards to items or duties which are expressly agreed to and set forth in writing by Lessor. Lessee shall keep and maintain the Leased Premises as set forth in PART SIX (B), pay all taxes in accordance with PART THREE, pay all casualty, liability and other insurance premiums as set forth in PART SIX (J), and satisfy all of its other obligations under this Agreement.
- B. MAINTENANCE BY LESSEE. Lessee shall be responsible for the following maintenance and repair to the Leased Premises:
1. All upkeep, repair, and maintenance of the Leased Premises including but not limited to interior walls, doors, locks, windows, flooring, fixtures, ceilings, roofs, lighting, electrical and plumbing systems, all heating, air conditioning and heating, fire monitoring and suppression systems.
 2. Lessee's responsibilities under this section shall also include all other internal, external, and supporting structures and equipment;
 3. Upon occupation of the Leased Premises, maintain current landscaping in the area of the Leased Premises, Exhibit A.
 4. Lessee will not store or dispose of any debris or waste materials on Airport property, except by means of waste receptacles or containers authorized by Lessor;
 5. Lessee shall comply with all federal, state, and local fire codes and regulations. Lessee shall also provide and maintain hand-operated fire extinguishers for the interior of the building in accordance with applicable safety codes;
 6. Lessee will comply in all aspects with the City of Kissimmee Code including all planning, zoning, and building codes, regulations, and ordinances. Lessor warrants that the intended use is compliant as to the City's land use and zoning codes.
 7. Lessor retains the right to, reasonably in both time and scope, upon written notice to Lessee, require Lessee to undertake maintenance on the Leased Premises. Lessor shall be the sole judge of the due maintenance undertaken by the Lessee and may

upon written notice require reasonable specific maintenance work to be completed by Lessee. If such reasonable maintenance is not completed within a reasonable time period, the Lessor shall have the right to perform such reasonable maintenance, and Lessee shall reimburse Lessor for the cost of such reasonable maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with PART FOUR above.

8. Lessee agrees that upon the expiration of the term of this Agreement or sooner termination thereof, the Leased Premises shall be delivered to Lessor in the same condition as when the Lessee obtained possession, and reasonable wear and tear. Lessor reserves the right to enter and make periodic inspections of the Leased Premises and improvements thereon during normal business hours. Lessor reserves the right to enter the Leased Premises during such times as necessitated by an emergency or in order to prevent the occurrence of waste to the Leased Premises and its fixtures.

C. CONSTRUCTION, ALTERATIONS, REPAIRS.

1. Lessee shall not erect any structures, make any improvements or modifications, or undertake any other construction on the Leased Premises, except as previously set forth, nor shall Lessee alter, modify or make additions, improvements, or repairs to or replace any structure which is existing or built, or install any fixtures other than trade fixtures which are removable without causing permanent injury to the Leased Premises without prior written approval of the Lessor, such approval not to be unreasonably withhold, conditioned or delayed.
2. Development and construction will only be permitted in accordance with the guidelines presented in the approved Airport Master Plan. Before commencement of any improvements or modifications to the Leased Premises, the Lessee shall submit a written construction application to the Director, and if the Director requests, the construction application shall be in the form as set forth below. The plans for the proposed improvements or modifications to the Leased Premises shall completely describe the function and design and shall also contain the following: upon request,
 - a. A graphic presentation of the improvements showing exact locations of access and egress to and from the Leased Premises, facilities included and interior layouts and plans.
 - b. A basic illustration of the décor of the Leased Premises including construction, furnishings and equipment.
 - c. Request for approval of above.
 - d. A schedule for completion of each phase of the improvements.

3. Lessor shall attempt to make a timely disposition of each Lessee Construction Application and will not arbitrarily or capriciously withhold or condition approval of the same.
 4. Upon approval, the Lessee shall proceed with the construction, with reasonable diligence and at its sole cost and expense.
 5. Where such alterations or construction has been made, Lessee shall, within (30) days following completion of the alterations, present to Lessor a complete set of “as-built” drawings including, without limitation, plumbing and electrical systems.
- D. UTILITIES. Lessee shall be solely responsible for and pay all charges for utilities for the Leased Premises, including but not limited to all charges pertaining to providing water, sewer, gas, electricity, telephone and internet service. Lessee shall pay utility charges within thirty (30) days of receiving the invoice for said utilities. Lessee will pay all costs of Storm Water fees associated with the paved aircraft parking area. Lessee will pay a proportional cost of any future fees enacted to cover the cost of utility services.
- E. TRASH AND GARBAGE REMOVAL. Lessee shall maintain the Leased Premises, improvements, and fixtures at all times in a safe, neat, and aesthetically pleasing condition. Lessee shall not permit the accumulation of any trash, ashes, or debris on the Leased Premises and shall remove such debris to a disposal site off the Airport property. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused from its operation. Lessee shall provide and use suitable – covered metal receptacles in an area acknowledged by Lessor for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.
- F. SIGNS. No signs, billboards, flyers shall be erected or maintained by Lessee except according to the Lessor's requirements for location and use of signs on Airport property. Before erection of any sign, billboard or flyer on city property, Lessee must obtain any applicable permits required by the City.
- G. NONDISCRIMINATION. **Exhibit C**, relating to FAA required non-discrimination provisions, is incorporated herein by this reference.
- H. HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY LESSEE. Lessee shall handle, use, store, and dispose of hazardous materials, fuel petroleum products, and all other materials, whether hazardous or not, owned or used by Lessee, its agents, contractors, assigns, guests, invitees, or any other person or firm in privity with Lessee on the Airport in accordance with all applicable federal, state, local laws which include but are not limited to Lessor’s regulations, rules, and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way

contaminate the Airport or property adjacent to the Airport through activities of the Lessee, the Lessee shall be responsible for the clean-up, containment and otherwise abatement of such contamination at Lessee's sole cost and expense. Further, Lessee shall notify the Lessor and all other appropriate government agencies of such an occurrence immediately after said incidence. Should the Lessee fail to comply with any term contained in this section, the Lessor may take any reasonable and appropriate action in the place of Lessee. The Lessee shall promptly pay the full cost of such remedial action incurred by the Lessor due to noncompliance under this section.

I. NO LIENS.

1. Lessee shall keep the Leased Premises free from all liens, including, but not limited to, mechanics liens arising from any alteration or construction work performed or labor or materials supplied to the Leased Premises. Any construction work on the Leased Premises authorized by the Lessee shall be performed pursuant to a "no-lien" contract and Lessee shall make certain that the Florida Statutes relating to the "no-lien" contracts are complied with in every particular detail.
2. If, at any time, Lessee shall cause any mechanic's, laborers, or material man's lien to be filed against the Leased Premises or any part thereof, Lessee shall cause the same to be discharged either by record, by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If Lessee fails to cause such liens to be discharged by payment or through appropriate bond within thirty (30) days from the date said lien is filed, then such failure should be deemed a default in the performance of this Agreement.
3. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or material man for any specific improvement, alteration to or repair of the Leased Premises, or any part of the Leased Premises.

J. INDEMNITY AND INSURANCE BY LESSEE.

1. Indemnification. Lessee further covenants and agrees to indemnify and hold the City, its members, officers, employees, and agents of each, forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from Lessee's use, occupancy, operation, or maintenance of the Leased Premises, including the work, acts, or omissions of Lessee's officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the City's negligence. The City will refer to Lessee promptly upon notice thereof, any claim made,

or suit instituted against the City which, in any way, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Lease Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended).

2. Insurance. Lessee shall procure and maintain in effect, at their own expense, for the term of this Agreement, Workers Compensation Insurance as required by Florida Statutes, or adequate Employee's Liability Insurance; Public Liability Insurance; and Property Damage Insurance covering all of Lessee's activities and the Leased Premises at the Airport. Lessee agrees to maintain general liability insurance coverage of \$1,000,000 for each occurrence and over \$2,000,000 general aggregate, as well as the required Auto insurance.

The Lessee shall maintain such insurance underwriters authorized to do business in the State of Florida satisfactory to the Lessor. Coverage is to be written on the broadest liability form including but not limited to products liability, blanket contractual, and independent contractors. All policies shall include the City of Kissimmee as an additional insured as its interests appear. Lessee shall furnish Lessor with a Certificate of Insurance from the Lessee's carrier indicating that there is such insurance coverage as hereinbefore provided, and if requested by the Lessor, shall submit to the Lessor, a true copy of the above insurance coverage. Said Certificate of Insurance shall provide that the policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice by registered or certified mail to the Lessor. The dollar amount of liability insurance coverage shall be reviewed on a periodic basis and modified, if necessary, based upon escalating costs and limits for the uses as provided in this Agreement as compared to similar airports.

- K. COMPLIANCE WITH LAW, RULES AND REGULATIONS. Lessee shall, at its sole expense, observe and comply with the ordinances, statutes, rules, and regulations of all governmental authorities including Lessor which are applicable to the conduct of Lessee's business and in addition, those rules, and regulations of the Lessor not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of the Lessee's breach of any terms or covenants contained within this Agreement shall be borne by Lessee. Lessee will ensure the integrity of the Airport perimeter security at all times. This includes ensuring all gates, to include pedestrian gates, remain locked at all times unless monitored by an employee of the Lessee. Personnel vehicles of Lessee's employees,

customers or contractors will not be parked on the airside.

L. RENOVATIONS.

1. All proposed renovation, refurbishing, alterations, remodeling, and construction shall be reviewed and approved by the Director and may also have to be reviewed and approved by the City Building Official, to include obtaining a Building Permit from the City.
2. The parties agree that all renovations, refurbishments, improvements, additions, fixtures, and alterations to Leased Premises shall be deemed to be attached to the freehold and shall become property of the Lessor to the extent as if the Leased Premises and its renovations, refurbishments, improvements, additions, fixtures, and alterations had been erected and installed on the Leased Premises prior to the execution of this Agreement.
3. Lessee expressly assumes full responsibility for all damages and injuries that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, alteration, renovation, refurbishment, improvement, or maintenance of any building, pursuant to or under this Agreement, and shall indemnify Lessor against any and all claims arising from such actions.

**PART SEVEN
OBLIGATIONS OF LESSOR**

- A. OPERATION AS A PUBLIC AIRPORT. Lessor covenants and agrees that at all times it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.
- B. ENTRY AND INSPECTION. Lessor shall have the right to enter upon and inspect the Leased Premises at any reasonable time, with twenty-four (24) hours' notice during the term hereof for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The Lessor shall not, during the course of any such inspection, unreasonably interfere with the Lessee's use and enjoyment of the Leased Premises.

**PART EIGHT
DAMAGE OR DESTRUCTION OF LEASED PREMISES**

If the Leased Premises shall be partially damaged by fire, flood, lightning, windstorm, or other force of the elements or by the public enemy or from any cause not caused by the Lessee or Lessee's agents, assigns, contractors, guests, or invitees, so as to adversely affect the Lessee's use of its exclusive space therein even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the Lessee at its own cost and expense. If damage caused shall be so extensive as to render the Lessee's exclusive space untenable, but

nevertheless capable of being repaired and made tenantable within a period of sixty (60) days, the Lessee shall repair the damage at its own cost and expense. The rent payable shall be proportionately paid up to the time of such damage but shall thenceforth cease until such time as such building and space shall be restored. If the Leased Premises are completely destroyed or so damaged that it will and does remain untenable for a period of more than sixty (60) days, Lessee shall have the right to terminate this Agreement upon written notice to Lessor within sixty (60) days from the date of such damage or destruction. Nothing in this Article shall apply to damages to the Leased Premises caused by the acts of the Lessee, and Lessee shall, at its own cost and expense, promptly repair with due diligence all such damages resulting from its act of said character. Lessee shall not be obligated to expend more on repair or restoration than the amount of any insurance proceeds received by Lessee.

PART NINE TERMINATION OF AGREEMENT, ASSIGNMENT, AND TRANSFERS

- A. TERMINATION. This Agreement shall terminate without action by either party at the end of the initial term or by providing a sixty (60) notice.
- B. TERMINATION BY LESSEE. Lessee may terminate this Agreement after:
 - 1. Material default by Lessor in the performance of a covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of sixty (60) days after receipt of written notice of default from Lessee. Unless Lessor is diligently attempting to remedy such default in which case Lessor shall be allowed such reasonable time as may be required.
 - 2. Upon Lessee giving ninety (90) days written notice to the Lessor pursuant to PART ELEVEN (G) of this Agreement and immediately upon or after the occurrence of either of the following events:
 - a. The failure or refusal of the Federal Aviation Administration (FAA) to permit the Lessee to operate into, from, or through the Kissimmee Gateway Airport
 - b. The duly enactment and implementation of a City, State, or Federal law, order, rule or regulation which is directly binding on the Leased Premises and the operation of the Lessee which directly results in the inability of the Lessee to use the Leased Premises for a period longer than one hundred eighty days (180) days during which time rent will abate.
- C. EXERCISING LESSEE'S RIGHTS OF TERMINATION. Lessee may exercise such right of termination by written notice to Lessor at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the Lessor.
- D. TERMINATION BY LESSOR. Lessor may terminate this Agreement in the event Lessee shall:

1. Be in arrears in the payment of the whole or any part of the rent or other fees, payments, or sums due for a period of sixty (60) days after written notice and the time such payments become due;
2. Make a general assignment for the benefit of creditors;
3. File a voluntary or involuntary petition in bankruptcy;
4. Abandon the Leased Premises;
5. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor of said default, unless Lessor is diligently attempting to remedy such default in which case Lessor shall be allowed such reasonable time as may be required;
6. Appoint or to cause the appointment of a receiver for Lessee;
7. Violate local, state, federal, or Lessor's laws, statutes, ordinances, rules, and regulations not inconsistent with the provisions of this Agreement and such default continues for a period of sixty (60) days after receipt of written notice from Lessor of said default.

E. WAIVER OF STATUTORY NOTICE TO QUIT. In the event Lessor exercises its option to terminate this Agreement upon the happening of any of the events set forth in Section D of this Article, Termination by Lessor, a notice of termination shall be sufficient to terminate this agreement. Upon such termination, Lessee agrees that it will forthwith surrender possession of the Leased Premises to Lessor. Lessor will be given access to leased premises to remove its property following termination.

F. SUBLETTING AND ASSIGNMENT. Lessee may not rent or sublease the Leased Premises without the prior written consent of the Lessor consent which shall not be withheld, conditioned or delayed. Lessee may, with the prior written consent of Lessor, assign this Agreement; in such event, Lessee shall remain liable to Lessor for the remainder of the term of the Agreement to pay to Lessor any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the Lessor, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

PART TEN RIGHTS UPON TERMINATION

A. LEASED PREMISES. It is the intent of this Agreement that the Leased Premises and Hangar shall be and remain the property of Lessor during the entire term of this Agreement

and thereafter.

- B. REMOVAL OF PERSONAL PROPERTY. Upon the expiration or termination of this Agreement, all buildings, improvements, and fixtures constructed or placed upon Leased Premises shall revert, free and clear of any mortgage or lien, to Lessor. At the termination of this Agreement for any reason, after payment of all rents and charges, Lessee shall have the right, within thirty (30) days thereafter to remove any of its office supplies, goods, furniture, machinery, equipment, and signs installed on the Lease Premises by Lessee, but shall repair at its own expense all damage caused by such removal. Any such personal property not removed by Lessee within such time shall become the property of the Lessor.
- C. LANDLORD LIEN. If the Lessee has not fully paid all the rents and charges pursuant to this Agreement, then the Lessor shall be entitled to a landlord lien for the purpose of securing the payment of all rents and charges. Lessor shall have the right to seize, hold, and liquidate such personal property possessed or owned by Lessee to satisfy any obligations of the Lessee and the costs incurred to perfect this landlord lien. Any excess funds from this liquidation shall be turned over to the Lessee.

PART ELEVEN GENERAL PROVISIONS

- A. LESSOR'S RESERVED RIGHTS.
1. City reserves the right: (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, and provided that City shall use reasonable efforts to preserve Lessee's rights hereunder, City shall be free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned by the making of such improvements, repairs, alterations and additions, unless such loss or damages are caused by the negligence or willful misconduct of the City, (ii) to establish such fees and charges for the use of the Airport by Lessee (excluding any additional charge for the use of the Leased Premises) and all others similarly situated from time to time as City may deem advisable, and (iii) for itself and others to utilize and maintain any utility and drainage easements located on the Leased Premises, and (iv) to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Leased Premises and to grant necessary utility easements therefore, provided that in the exercise of such rights, Lessee's use of the Leased Premises and any Improvements shall not be unreasonably impaired and any damage to the Leased Premises or any Improvements caused by City as a result thereof shall be repaired without cost to Lessee.
 2. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the terms relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be reimbursement to Lessor for federal funds for the development of the Airport.

- B. NON-INTERFERENCE WITH OPERATION OF AIRPORT. Lessee by accepting this Agreement expressly agrees for itself and its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event this covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the reasonable expense of Lessee.

Lessor shall maintain and keep in repair the landing area of the Airport and shall have the right to direct and control all activities of the Lessee in this regard.

- C. NONEXCLUSIVE RIGHT.

The Lessee expressly agrees, on behalf of itself and its successors and assigns that to the extent it has any rights under this Agreement to conduct any activity on the Airport property, such rights are nonexclusive and City has reserved the right to grant similar rights to others at the Airport. The provisions of this subsection shall not confer any rights on Lessee which have not been expressly granted to Lessee elsewhere in this Agreement.

- D. WAIVER OF JURY TRIAL, VENUE. It is mutually agreed by and between Lessee and Lessor 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. Venue of all actions shall be Osceola County, Florida.

- E. TAXES, LICENSES, AND PERMITS. Lessee shall pay all personal property taxes which may be assessed against merchandise, or other personal property belonging to the Lessee located on the Leased Premises, or other permitted portions of the Airport. In the event any real estate taxes are assessed against the land or improvements on the Leased Premises during the term of this Agreement, such taxes shall be paid by Lessee. Lessee shall obtain and pay for all license, permits, fees, or other authorization or charges as required under federal, state, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

- F. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

- G. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted, such notice shall be served by Certified or Registered Mail with return receipt, addressed to the Lessor in following manner:

Director of Aviation
Kissimmee Gateway Airport
401 Dyer Boulevard,
Kissimmee, FL 324741-4613

and notices, consents and approvals to addressed to Lessee in the following manner:

SKY WAY ENTERPRISES, INC.
1111 Coral Way
Coral Gables, Florida 33134

or such other addresses as the parties may designate to each other in writing.

- H. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- I. SUCCESSORS AND ASSIGNS. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- J. AMERICANS WITH DISABILITIES ACT. As used herein, “ADA” shall mean the Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), as amended from time to time, and the regulations promulgated thereunder. Lessee shall be responsible for any actions required to comply with ADA (including, without limitation, any actions required by the City to enable the City to meet its ADA obligations with respect to Lessee’s operations) as a result of (i) any Improvements or modifications which it makes to the Leased Premises, (ii) its particular use of the Leased Premises and (iii) any changes to the ADA after the Effective Date. Any modification to the Leased Premises, which Lessee is required to make under this Section, shall be performed to the satisfaction of the City. In the event the Lessee shall fail to construct or modify any Improvements to the Leased Premises as required under this Section, the City shall have the right to enter the Leased Premises and perform such modifications on the Lessee’s behalf, without liability for any disruption to the Lessee’s activities therein during the completion of or as a result of such modifications, and the cost of such modifications shall be invoiced to the Lessee and shall be promptly paid by the Lessee to the City as additional Rent hereunder.
- K. ATTORNEY FEE PROVISION. In the event that any proceeding at law or in equity arises hereunder or in connection herewith (including any appellate proceeding or bankruptcy proceeding) the prevailing party shall be awarded costs, reasonable expert fees and reasonable Attorney’s Fees incurred in connection therewith.
- L. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- M. PUBLIC ENTITIES CRIME NOTICE. The Lessee acknowledges the following notice:
- 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 \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.

- N. BROKER LANGUAGE. City and Lessee represent and warrant to each other that they have dealt with no broker in connection with this Agreement and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.
- O. ESTOPPEL PROVISION. At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to the best of the responding party's knowledge, the requesting party is not in default under this Agreement (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Agreement and the relationship between City and Lessee as may reasonably be requested. In addition, at the City's request, Lessee shall promptly execute and return to City a short form memorandum of this Agreement which may be recorded in the public records of Osceola County, Florida in City's sole discretion.
- P. ENGINE RUNUPS. Except to the extent that noise restrictions of any governmental City having jurisdiction thereover may preclude or limit the same, Lessee shall have the right to conduct engine runups at the Leased Premises, and/or the nonexclusive right in common with others, to conduct engine runups on the Airport at such location or locations as City may designate from time to time for such purposes, in reasonable proximity to the Leased Premises on the Airport, and subject to the reasonable rules and regulations of City.
- Q. EFFECTIVE DATE. The Effective Date shall mean the date that the last party fully executes this Agreement.

PART TWELVE ENVIRONMENTAL MATTERS

- A. STORAGE TANKS.
 - 1. Lessee agrees to comply with all applicable federal, state, and local government regulations regarding above and underground storage tanks effective on the date of execution of this Agreement and as hereafter may be enacted or amended. Specifically, Lessee agrees that all regulated above or underground storage tanks owned or operated by it and located on the Leased Premises or which might discharge on or under the Leased Premises, shall be registered with the appropriated federal, stated, and local authorities; shall be constructed of approved materials; shall, if existing, be appropriately retrofitted pursuant to current federal,

state, and local requirements; shall have an approved method of leak detection; and shall be made available for compliance inspection at all times during normal business hours. ("Approved" for purposes of this provision shall mean: "determined to meet applicable federal and state environmental regulatory requirements.") Further, Lessee agrees to properly record, maintain, and reconcile all inventory record required by appropriate federal, state, and local regulations and to make such records available for inspection at the Leased Premises at all times during normal business hours.

2. Lessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. 280 by obtaining at least one million dollars (\$1,000,000.00) of third-party liability insurance and one million dollars (\$1,000,000.00) of restoration (cleanup) insurance as coverage for all petroleum storage tank activities conducted by Lessee on or adjacent to the Leased Premises. Such insurance must be maintained in effect during the entirety of the term of this Agreement and proof of such insurance must be provided to Lessor prior to the operation or installation of any regulated above or underground petroleum storage tanks on or about the Leased Premises. This insurance requirement may be satisfied by qualification for and compliance with the Florida Petroleum Liability Insurance and Restoration Program as established by Section 376.3072, Florida Statutes.

B. INDEMNIFICATION. Lessee agrees to indemnify and hold the City, and the members, officers, employees and agents of each, harmless from and against all liabilities, claims, judgment, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from Lessee's use, occupancy, operation or maintenance of the Leased Premises, including the work, acts, or omissions of its officers, agents, employees, contractors, subcontractors, operators, and sub-lessees, except to the extent caused by the City's negligence or by the joint negligence of the City and any person other than Lessee, its officers, agents, employee, contractors, subcontractors, operators, or sub-lessees. City will refer to Lessee, promptly upon notice thereof, any claim made, or suit instituted against it, which, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by the Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount.

C. HAZARDOUS MATERIALS COVENANTS.

1. Lessee hereby represents and warrants to and for the benefit of the disposal of any Hazardous Materials (hereinafter defined) upon the Leased Premises or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). From purposes hereof the term "Hazardous Materials" shall mean and

refer to (i) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. *6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 24, *6901, et seq.) (“CERCLA”), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the Leased Premises is prohibited by the City that the Leased Premises will not use or operated in any manner that will result in the storage use treatment, manufacture, or any applicable environmental laws or regulations (“Laws”) or by any other legal requirements affecting the Leased Premises; (viii) petroleum-based materials (with the exception of tires affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any laws or by any other legal requirements affecting the Leased Premises. The term “Hazardous Materials Contamination” shall mean and refer to the contamination of the Leased Premises, soil, surface water, ground water, air, or other elements on or off the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Leased Premises.

2. In addition to and without limiting the generality of any other provisions of this Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any damages, expenses, fees, claims, demands, causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys’ fees and costs of litigation, and costs and expenses of response, remedial, and corrective work and other cleanup activities, arising out of or in any manner connected with (i) the “release” or “threatened release” (as those term are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Lessee or Lessee’s employees, agents, delegates, invitees, licensees, concessionaires, contractors, or representatives, of any Hazardous materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises caused solely by Lessee. The provisions of this Section shall survive any acquisition of the Leased Premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, liabilities, and all losses.
3. Lessor shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists prior to the date of this Agreement. The Parties hereby acknowledge that City shall conduct a Phase I report of the Leased Premises, prior to the construction of any improvements by the Lessee. The Lessee shall not be obligated to take possession of the property, until completion of the Phase I, and any remediation work identified by this report or a Phase II report has been completed by Lessor. The Phase I conducted shall act as the “Baseline” to establish the environmental condition of the Leased Premises at the time of the commencement of possession by Lessee.

4. Within thirty (30) days of the expiration of this Agreement, Lessor shall prepare an environmental report equivalent to Phase I and Phase II, to include borings to establish the environmental condition of the Leased Premises as of expiration of the Agreement. In the event it is determined during the Agreement or at the expiration of this Agreement, that the Leased Premises contains pollutants in amounts which violate any applicable Federal, State or local governmental standards, Lessee shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists after the Baseline. To the extent permitted by applicable law, Lessee shall indemnify defend and hold the City completely harmless from and against any and all liabilities (including, but not limited to, liability under CERCLA and any other environmental statute, law, ordinance, regulation, rule or order), losses, suits, claims, demands, judgments, fines, damages, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to court costs, reasonable expert fees and reasonable Attorneys' Fees) with respect to any hazardous substances existing at the Leased Premises prior to expiration of the Agreement.

Signature page to follow

IN WITNESS THEREOF, the parties now sign, agree to, and enter into this Agreement on the day and year first above written.

SKY WAY ENTERPRISES, INC.

Julio J. Marquez, President

State of _____)
County of _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this _____ day of _____, 2021, by Julio J. Marquez, of **Sky Way Enterprises Inc.**, a corporation organized under the laws of the State of Florida, who is ☐ personally known to me or ☐ who has produced _____ as identification, and acknowledged before me that they executed the foregoing instrument as such officer in the name and on behalf of the corporation.

Seal:

Notary Public, State of Florida

CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Mayor-Commissioner

ATTEST:

City Clerk

Approved as to form and legality

City Attorney

Exhibit “A”
[“Leased Premises Exhibit”]

Exhibit “B”
[“Proposed Taxiway Extension Project Exhibit”]

Exhibit “C”
FAA Required Contract Provisions
GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”), agrees as follows, if and to the extent applicable as a matter of law:

Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Lessees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-Lessee or supplier will be notified by the Lessee of the Lessee’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: If and to the extent applicable as a matter of law, the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-Lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, the Aviation City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.

2. In the event of breach of any of the above nondiscrimination covenants, the Aviation City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

**TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS
AND AUTHORITIES**

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law, such may be amended from time to time upon thirty (30) days' advanced written notice to Lessee:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (Prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

EXHIBIT A

Page 214 of 622





100% FINAL DESIGN

ITEM 7.K**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM YEAR 2021 FUNDING AGREEMENT****Request**

Acceptance of the Program Year 2021 Community Development Block Grant (CDBG) from the U.S. Department of Urban Development (HUD) in the amount \$769,084, approval to execute the funding agreement and approval for the Mayor, City Manager or Development Services Director to execute any CDBG related documents and sub-recipient agreements according to the levels of signature authority consistent with the City's Procurement Policy.

Explanation

On July 20, 2021, The City Commission approved the Program Year (PY) 2021 Annual Action Plan. The Plan delineates how the City intends to use its PY 2021 CDBG allocation of \$769,084 to address the needs and priorities of the community. In order to use the CDBG funds, the attached funding agreement is required to be executed and returned to HUD.

Recommendation

Staff recommends acceptance of the Program Year 2021 Community Development Block Grant (CDBG) from the U.S. Department of Urban Development (HUD) in the amount \$769,084, approval to execute the funding agreement, and approval for the Mayor, City Manager or Development Services Director to execute any CDBG related documents and sub-recipient agreements according to the levels of signature authority consistent with the City's Procurement Policy after review by the City Attorney or her designee.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Funding Agreement_doc
2. CDBG Special Grant Conditions (1)

Funding Approval/Agreement

Title I of the Housing and Community
Development Act (Public Law 930383)
HI-00515R of 20515R

U.S. Department of Housing and Urban Development

Office of Community Planning and Development
Community Development Block Grant Program

OMB Approval No. 2506-0193
exp 5/31/2018

1. Name of Grantee (as shown in item 5 of Standard Form 424) Kissimmee	3a. Grantee's 9-digit Tax ID Number 596000348	3b. Grantee's 9-digit DUNS Number 070481952
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 101 N Church St Kissimmee, FL 34741-5034	4. Date use of funds may begin 10/1/2021	
	5a. Project/Grant No. 1 B-21-MC-12-0051	6a. Amount Approved \$769,084
	5b. Project/Grant No. 2	6b. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Lisa A. Hill		Grantee Name (Contractual Organization) Kissimmee (City of Kissimmee)	
Title CPD Director		Title	
Signature  LISA HILL Digitally signed by: LISA HILL DN: CN = LISA HILL, C = US, O = U.S. Government, OU = Department of Housing and Urban Development, Office of Community Planning and Development Date: 2021.12.01 09:54:09 -05'00'	Date (mm/dd/yyyy) 11/24/2021	Date (mm/dd/yyyy)	

7. Category of Title I Assistance for this Funding Action: Entitlement, Sec 106(b)	8. Special Conditions (check one) ☐ None ☒ Attached	9a. Date HUD Received Submission 8/16/2021	10. check one ☒ a. Orig. Funding Approval ☐ b. Amendment Amendment Number
		9b. Date Grantee Notified 11/24/2021	
		9c. Date of Start of Program Year 10/01/2021	
11. Amount of Community Development Block Grant			
a. Funds Reserved for this Grantee		FY 2021	
b. Funds now being Approved		\$769,084	
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved N/A	12b. Name and complete Address of Public Agency City of Kissimmee 101 N Church St Kissimmee, FL 34741-5034
Loan Guarantee Acceptance Provisions for Designated Agencies: The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.	12c. Name of Authorized Official for Designated Public Agency
	Title
	Signature 

HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	1 5 3											
	1 7 6											
			Y					Project Number		Amount		
			Y					Project Number		Amount		
Date Entered PAS (mm/dd/yyyy)		Date Entered LOCCS (mm/dd/yyyy)		Batch Number		Transaction Code		Entered By		Verified By		

Additional CDBG-CV Requirements

In addition to the terms and conditions in the Funding Approval/Agreement, the following requirements apply to Grantees receiving CDBG-CV funds in accordance with the Coronavirus Aid, Relief and Economic Security Act (CARES Act) (Pub. L. 116-136).

- 1) The Grantee agrees to comply with the requirements in the CARES Act that apply to CDBG-CV grants and must use the CDBG-CV grant funds to prevent, prepare for and respond to coronavirus.
- 2) The grantee agrees to comply with the requirements of the Housing and Community Development Act of 1974 (42 USC 5301 et seq.) and implementing regulations at 24 CFR part 570, as now in effect and as may be amended from time to time, and as modified by the rules, waivers and alternative requirements published by HUD from time to time. Rules, waivers and alternative requirements of Federal Register notices applicable to CDBG-CV grants are hereby incorporated into and made a part of the grant agreement.
- 3) The Grantee may use CDBG-CV funds as reimbursement for previously incurred costs, provided that those costs are allowable and consistent with the CARES Act's purpose to prevent, prepare for and respond to coronavirus.
- 4) The grantee agrees to establish and maintain adequate procedures to prevent any duplication of benefits as required by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155), as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442).
- 5) The period of performance for the funding assistance specified in the Funding Approval/Agreement ("Funding Assistance") shall be six years. It shall begin on the date specified in item 4 in the Funding Approval/Agreement and shall end six years later, on the month and day specified in item 4. The Grantee shall not incur any obligations to be paid with the Funding Assistance after this period of performance.
- 6) The Recipient shall attach a schedule of its indirect cost rate(s) in the format set forth below to the executed Funding Approval/Agreement that is returned to HUD. The Recipient shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receives from the Recipient shall be incorporated herein and made a part of this Funding Approval/Agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

Administering Department/Agency	Indirect cost rate	Direct Cost Base
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

Instructions: The Recipient must identify each agency or department of the Recipient that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR §200.414(f)), and the type of direct cost base to which the rate will be applied (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rates for subrecipients.

- 7) In addition to the conditions contained in the Funding Approval/Agreement (form HUD 7082), the grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS); the System for Award Management (SAM.gov.); the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and General Contractor Registration; and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.

- 8) The grantee shall ensure that no CDBG-CV funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water- related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118) shall be considered a public use for purposes of eminent domain.

- 9) The Grantee or unit of general local government that directly or indirectly receives CDBG-CV funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.
- 10) E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.
- 11) CDBG-CV funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." (Source – This condition is included as requirement on the use of fiscal year 2020 CDBG funds by the Community Development Fund heading, Department of Housing and Urban Development Appropriations Act, 2020, Public Law 116-94, and is made applicable to this grant by the CARES Act).

ITEM 7.L

AMENDED AND RESTATED AIRPORT LEASE AGREEMENT WITH SANDPIPER FLORIDA REAL ESTATE HOLDINGS, LLC

Request

Approval of a lease modification for Sandpiper Florida Real Estate Holdings, LLC.

Explanation

The City signed an agreement with Sandpiper Florida Real Estate Holdings, LLC, on November 3, 2020, for a ground lease for Parcels W3 and W4 to support aircraft hangars. Sandpiper is selling one Hangar on Parcel W4 and has requested the agreement be modified to reflect the reduced square footage at the current land rental rate. All other terms remain in place.

Recommendation

Staff recommends City Commission approval of a lease modification for Sandpiper Florida Real Estate Holdings, LLC.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. Amended and Restated Fixed Base Operator's Lease Agreement

**KISSIMMEE GATEWAY AIRPORT
AMENDED and RESTATED FIXED BASE OPERATOR'S LEASE AGREEMENT**

SANDPIPER FLORIDA REAL ESTATE HOLDINGS, LLC

THIS FIRST AMENDED AND RESTATED LEASE AGREEMENT (the "AGREEMENT") is made this ____ day of _____, 2021 between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, hereinafter referred to as "**Lessor**" or "**City**" and **SANDPIPER FLORIDA REAL ESTATE HOLDINGS, LLC**, a Florida Corporation, whose address is c/o Whelan Associates, LLC, 70 N. 2nd St, New Bedford, MA 02740 hereinafter referred to as "**Lessee**." City and Lessee are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**".

WITNESSETH:

WHEREAS, City is the owner of certain improvements to real property located at 3951 Merlin Drive, Kissimmee, Florida 34741, at the Kissimmee Gateway Airport, a municipal airport of the City of Kissimmee, Florida (the "**Airport**"); and

WHEREAS, on November 3, 2020, the City and Lessee entered into a Lease Agreement for Parcels W3 and W4, to operate a fixed base operation maintenance facility, situated on land located at 3951 and 3955 Merlin Drive, Kissimmee Gateway Airport, pursuant to the terms of this Agreement; and

WHEREAS, Lessee is selling the Hanger on Parcel W4, and the Lease Agreement with the City has to be modified to reflect the reduced square footage; and

WHEREAS, Lessee is also desirous of adding a ten year option renewal to the Lease term due to the Lessees additional investment.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other able consideration, the Parties hereto agree as follows:

**PART ONE
DESCRIPTION OF LEASED PREMISES**

- A. **LEASED PREMISES.** Lessor leases to Lessee the premises (the "**Leased Premises**") located at the Airport, more particularly described, as "Parcel W3" attached, and hereby incorporated by reference as **Exhibit A**, which consists of 50,040 square feet (1.15 acres).
- B. **CONDITION OF LEASED PREMISES.** Lessee accepts the Leased Premises and any improvements on, about, or associated with the Leased Premises "As Is, Where Is" and in their present condition. Lessee further warrants that the Leased Premises are suitable for Lessees proposed use described herein.
- C. **RE-ADJUSTMENT OF LEASED PREMISES.** This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and

city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the City and the United State of America, the State of Florida, or the County of Osceola, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or City funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, Lessee hereby consents to any and all such modifications and changes as may be reasonably required to the extent that such modifications and changes do not unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease. In the event that any such modifications or changes unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease, then Lessee shall have the option to terminate this Lease.

Notwithstanding the foregoing provisions of this Section C, in the event any such restrictions, agreements or modifications to this Lease increase the Annual Rent payable hereunder or materially and adversely affect the ability of Lessee to use the Leased Premises for the purposes permitted under this Lease, Lessee shall have the right to terminate this Lease by written notice to the City.

PART TWO TERM OF LEASE

- A. PRIMARY TERM. The term of this Lease shall be for a thirty (30) year period, with the period commencing on the first day of November 2020 and ending on the last day of October 2050.
- B. RENEWAL OPTION. Provided Lessee is not in default of the Agreement, Lessee is hereby granted an exclusive first option to renew this Agreement upon all the existing terms and conditions except for rent for one (1) additional term of ten (10) years. At the end of this extension, provided the Lessee is not in default of the Agreement, Lessee is hereby granted a second renewal option for this Agreement upon all the existing terms and conditions except for rent for an additional one (1) term of ten (10) years. These options shall be exercised by written notice to the City not less than one hundred twenty (120) days prior to expiration of the existing term. Upon receipt of the extension options the parties shall negotiate the rent for the renewal period based on an appraisal as set forth in Part Three, paragraph B.
- C. HOLDING OVER. In the event Lessee shall continue to occupy the Leased Premises beyond the term of this Agreement after Lessor gives written notice to vacate, such holding over shall not constitute a renewal of this Agreement but shall be a tenancy of

sufferance only. The amount of rent to be paid by Lessee during this hold over period shall equal two (2) times the normal monthly rent as stated in this agreement or the maximum amount allowed by law, whichever is greater.

PART THREE RENT

- A. RENT. The initial net rent under this Lease for the Leased Premises is **\$10,812.80** per year, payable monthly ("Annual Rent") plus sales tax and any other applicable tax including property tax. The following sum shall be payable monthly, in advance, in the amount of **\$901.07**("Monthly Rent") plus said taxes. Payment of rent will commence on November 1, 2020.

Monthly Rent will be due on the first day of every month ("Due Date") and shall be deemed delinquent if not received by the Lessor on or before the tenth day of every month. The initial net Annual Rent and Monthly Rent shall be subject to adjustment as enumerated in Part Three of this Lease.

- B. RENT ADJUSTMENTS. Lessor and Lessee recognize and agree that the purchasing power of the United States Dollar is evidenced by the Consumer Price Index – Urban Wage Earners and Clerical Workers ("Price Index") as published by the United States Department of Labor's Bureau of Labor Statistics. Lessor and Lessee also recognize that local market trends in the Central Florida and the Kissimmee area evolve over time and greatly influence the current market values of leaseholds located at the Kissimmee Gateway Airport.

The parties agree that beginning three (3) years from the Effective Date and every year thereafter, with the exception of every fifth (5th) year as set forth below, ("CPI Adjustment Year"), the parties hereto will compare the price index for said year with the price index for 2020 and the Annual Rent payments shall be recalculated and increased in the same proportion as said price index has increased in the same proportion as said price index has increased when compared with the price index for September, 2020, but shall never decrease.

Notwithstanding the above, beginning five (5) years from the Effective Date and every fifth year thereafter ("Appraisal Year") the City may obtain an appraisal of the Leased Premises from a MAI certified appraiser to establish the then Fair Market Value, as defined below, of the Leased Premises. If the City deems an appraisal is appropriate due to market conditions, the City shall notify the Lessee of their intention to invoke the right of obtaining an appraisal, sixty days prior to seeking the appraisal. Such determination shall be at the sole discretion of the City. On each Appraisal Year, in lieu of the CPI Adjustment, the Annual Rent shall increase, to the Fair Market Value, as determined by the appraisal. The Fair Market Value of the Leased Premises (but excluding Lessee improvements constructed after the Effective Date) shall be determined by appraisal where the appraiser determines the market supported rental rate per square foot of Leased Premises and improvements thereon, taking into account the land and all improvements thereon within

thirty (30) days of the date on which an adjustment to Annual Rent becomes effective and shall be based on the value of comparable property in the Orlando Metropolitan area, and shall not be restricted to the consideration of properties located at the Airport (the "Fair Market Value"). The City shall select a qualified appraiser ("Appraiser") and notify Lessee of such selection, and the Appraiser shall proceed to determine the then Fair Market Value and shall provide Lessee and City with a copy of such appraisal.

The City shall pay the fees and expenses of each appraiser appointed by such party. Any appraiser designated to serve in accordance with the provisions of this Agreement shall be designated as an "MAI" appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise commercial real estate, shall be disinterested and shall have been actively engaged in the appraisal of real estate for a period of not less than five (5) years immediately preceding his appointment.

- C. RENT CAPS. In no event, however, shall the Rent Adjustment be more than ten percent (10%) for a rent adjustment.
- D. PAYMENT OF SALES TAX. Lessee shall be liable at its sole cost and expense, and the City shall have no liability for, any sales, use or similar taxes with respect to all rent and other payments made by Lessee in accordance with the provisions of this Agreement. Lessee shall indemnify, defend, and hold City completely harmless from and against any liability, including any interest and penalties, which might arise in connection with any such taxes.

PART FOUR PAYMENTS

- A. TIME AND PLACE OF PAYMENT. All payments of rents, fee, taxes, and other charges are to be made at the Kissimmee Gateway Airport, City of Kissimmee, 401 N. Dyer Blvd, Kissimmee, FL 34741, or such other place Lessor may direct Lessee in writing.
- B. DELINQUENT PAYMENT OF RENT AND FEES. If rent or fees are not timely paid, then the Lessee shall pay to Lessor a penalty of 5% of the amount due commencing sixteen (16) days after the DUE DATE. Lessor shall charge no penalty upon that portion of any debt that, in good faith, is in dispute or charge a penalty that exceeds the then amount permitted under Florida law. All late fees are to be paid to Lessor within 30 days of the initial date of accrual.

PART FIVE PRIVILEGES

- A. USE. The Leased Premises shall be used solely for the following Fixed Base Operator Activities as defined in the Minimum Aeronautical Service Standards for Aeronautical Tenants at the Kissimmee Gateway Airport as amended from time to time and incorporated by reference into this Lease:

Category "D" – Airframe and Power Plant Repair
 Category "E" – Avionics, Instrument and/or Propeller Repair Service

The Leased Premises may be used for private/special events, offices, storage and used ancillary to Lessee's business provided they are not disruptive to airport operations and coordinated with the Director of Aviation ("Director"). The Leased Premises may not be used for any other purposes unless approved in writing by the Lessor.

- B. PROHIBITED USES. The Lessee shall not use or permit the use of the Leased Premises or any part thereof for any purpose or purposes other than those set forth in PART FIVE (A) above, unless approved in writing by the Lessor such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall not commit or suffer to be committed any waste in or upon the Leased Premises or maintain any public or private nuisance, nor, without limiting the generality of the foregoing, shall the Lessee use or permit the use of the Leased Premises for any illegal, improper, immoral, or unlawful purposes.
- C. INGRESS AND EGRESS. Lessee shall have at all times the full and free right of ingress and egress. Such right also extends to persons or organizations supplying materials or furnishing services to Lessee, as well as employees, customers, guest, and other invitees, who include vehicles, machinery, and equipment reasonably required by such persons or organizations.

PART SIX OBLIGATIONS OF AGREEMENT

- A. NET LEASE. The use and occupancy of the Leased Premises by Lessee shall be without cost or expense to Lessor. This Agreement shall be without cost to the City except for the City's obligations set forth or specifically provided elsewhere herein. The Lessee accepts the Leased Premises in its "As Is, Where Is" condition except with regards to items or duties which are expressly agreed to and set forth in writing by Lessor. Lessee shall keep and maintain the Leased Premises as set forth in PART SIX (B), pay all taxes in accordance with PART THREE, pay all casualty, liability and other insurance premiums as set forth in PART SIX (J), and satisfy all of its other obligations under this Agreement.
- B. MAINTENANCE BY LESSEE. Lessee shall be responsible for the following maintenance and repair to the Leased Premises:
1. All upkeep, repair, and maintenance of the Leased Premises including but not limited to interior walls, doors, locks, windows, flooring, fixtures, ceilings, roofs, lighting, electrical and plumbing systems, all heating, air conditioning and heating systems.
 2. Lessee's responsibilities under this section shall also include all other internal, external, and supporting structures and equipment;

3. Upon occupation of the Leased Premises, maintain current landscaping in the area of the Leased Premises, Exhibit A.
4. Lessee will not store or dispose of any debris or waste materials on Airport property, except by means of waste receptacles or containers authorized by Lessor;
5. Lessee shall comply with all federal, state, and local fire codes and regulations. Lessee shall also provide and maintain hand-operated fire extinguishers for the interior of the building in accordance with applicable safety codes;
6. Lessee will comply in all aspects with the City of Kissimmee Code including all planning, zoning, and building codes, regulations, and ordinances. Lessor warrants that the intended use is compliant as to the City's land use and zoning codes.
7. Lessor retains the right to, reasonably in both time and scope, upon written notice to Lessee, require Lessee to undertake maintenance on the Leased Premises. Lessor shall be the sole judge of the due maintenance undertaken by the Lessee and may upon written notice require reasonable specific maintenance work to be completed by Lessee. If such reasonable maintenance is not completed within a reasonable time period, the Lessor shall have the right to perform such reasonable maintenance, and Lessee shall reimburse Lessor for the cost of such reasonable maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with PART FOUR above.
8. Lessee agrees that upon the expiration of the term of this Agreement or sooner termination thereof, the Leased Premises shall be delivered to Lessor in the same condition as when the Lessee obtained possession, and reasonable wear and tear. Lessor reserves the right to enter and make periodic inspections of the Leased Premises and improvements thereon during normal business hours. Lessor reserves the right to enter the Leased Premises during such times as necessitated by an emergency or in order to prevent the occurrence of waste to the Leased Premises and its fixtures.

C. CONSTRUCTION, ALTERATIONS, REPAIRS.

1. Lessee shall not erect any structures, make any improvements or modifications, or undertake any other construction on the Leased Premises, except as previously set forth, nor shall Lessee alter, modify or make additions, improvements, or repairs to or replace any structure which is existing or built, or install any fixtures other than trade fixtures which are removable without causing permanent injury to the Leased Premises without prior written approval of the Lessor, such approval not to be unreasonably withhold, conditioned or delayed.
2. Development and construction will only be permitted in accordance with the guidelines presented in the approved Airport Master Plan. Before commencement

of any improvements or modifications to the Leased Premises, the Lessee shall submit a written construction application to the Director, and if the Director requests, the construction application shall be in the form as set forth below. The plans for the proposed improvements or modifications to the Leased Premises shall completely describe the function and design and shall also contain the following: upon request,

- a. A graphic presentation of the improvements showing exact locations of access and egress to and from the Leased Premises, facilities included and interior layouts and plans.
 - b. A basic illustration of the décor of the Leased Premises including construction, furnishings and equipment.
 - c. Request for approval of above.
 - d. A schedule for completion of each phase of the improvements.
3. Lessor shall attempt to make a timely disposition of each Lessee Construction Application and will not arbitrarily or capriciously withhold or condition approval of the same.
 4. Upon approval, the Lessee shall proceed with the construction, with reasonable diligence and at its sole cost and expense.
 5. Where such alterations or construction has been made, Lessee shall, within (30) days following completion of the alterations, present to Lessor a complete set of "as-built" drawings including, without limitation, plumbing and electrical systems.
- D. UTILITIES. Lessee shall be solely responsible for and pay all charges for utilities for the Leased Premises, including but not limited to all charges pertaining to providing water, sewer, gas, electricity, telephone and internet service. Lessee shall pay utility charges within thirty (30) days of receiving the invoice for said utilities. Lessee will pay all costs of Storm Water fees associated with the paved aircraft parking area. Lessee will pay a proportional cost of any future fees enacted to cover the cost of utility services.
- E. TRASH AND GARBAGE REMOVAL. Lessee shall maintain the Leased Premises, improvements, and fixtures at all times in a safe, neat, and aesthetically pleasing condition. Lessee shall not permit the accumulation of any trash, ashes, or debris on the Leased Premises and shall remove such debris to a disposal site off the Airport property. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused from its operation. Lessee shall provide and use suitable – covered metal receptacles in an area acknowledged by Lessor for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.

- F. SIGNS. No signs, billboards, flyers shall be erected or maintained by Lessee except according to the Lessor's requirements for location and use of signs on Airport property. Before erection of any sign, billboard or flyer on city property, Lessee must obtain any applicable permits required by the City.
- G. NONDISCRIMINATION. **Exhibit B**, relating to FAA required non-discrimination provisions, is incorporated herein by this reference.
- H. HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY LESSEE. Lessee shall handle, use, store, and dispose of hazardous materials, fuel petroleum products, and all other materials, whether hazardous or not, owned or used by Lessee, its agents, contractors, assigns, guests, invitees, or any other person or firm in privity with Lessee on the Airport in accordance with all applicable federal, state, local laws which include but are not limited to Lessor's regulations, rules, and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, the Lessee shall be responsible for the clean-up, containment and otherwise abatement of such contamination at Lessee's sole cost and expense. Further, Lessee shall notify the Lessor and all other appropriate government agencies of such an occurrence immediately after said incidence. Should the Lessee fail to comply with any term contained in this section, the Lessor may take any reasonable and appropriate action in the place of Lessee. The Lessee shall promptly pay the full cost of such remedial action incurred by the Lessor due to noncompliance under this section.
- I. NO LIENS.
1. Lessee shall keep the Leased Premises free from all liens, including, but not limited to, mechanics liens arising from any alteration or construction work performed or labor or materials supplied to the Leased Premises. Any construction work on the Leased Premises authorized by the Lessee shall be performed pursuant to a "no-lien" contract and Lessee shall make certain that the Florida Statutes relating to the "no-lien" contracts are complied with in every particular detail.
 2. If, at any time, Lessee shall cause any mechanic's, laborers, or material man's lien to be filed against the Leased Premises or any part thereof, Lessee shall cause the same to be discharged either by record, by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If Lessee fails to cause such liens to be discharged by payment or through appropriate bond within thirty (30) days from the date said lien is filed, then such failure should be deemed a default in the performance of this Agreement.
 3. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or material man for any specific

improvement, alteration to or repair of the Leased Premises, or any part of the Leased Premises.

J. INDEMNITY AND INSURANCE BY LESSEE.

1. Indemnification. Lessee further covenants and agrees to indemnify and hold the City, its members, officers, employees, and agents of each, forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from Lessee' use, occupancy, operation, or maintenance of the Leased Premises, including the work, acts, or omissions of Lessee' officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the City's negligence. The City will refer to Lessee promptly upon notice thereof, any claim made or suit instituted against the City which, in any way, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Lease Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended).

2. Insurance. Lessee shall procure and maintain in effect, at their own expense, for the term of this Agreement, Workers Compensation Insurance as required by Florida Statutes, or adequate Employee's Liability Insurance; Public Liability Insurance; and Property Damage Insurance covering all of Lessee's activities and the Leased Premises at the Airport. Lessee agrees to maintain general liability insurance coverage of \$1,000,000 for each occurrence and over \$2,000,000 general aggregate, as well as the required Auto insurance.

The Lessee shall maintain such insurance underwriters authorized to do business in the State of Florida satisfactory to the Lessor. Coverage is to be written on the broadest liability form including but not limited to products liability, blanket contractual, and independent contractors. All policies shall include the City of Kissimmee as an additional insured as its interests appear. Lessee shall furnish Lessor with a Certificate of Insurance from the Lessee's carrier indicating that there is such insurance coverage as hereinbefore provided, and if requested by the Lessor, shall submit to the Lessor, a true copy of the above insurance

coverage. Said Certificate of Insurance shall provide that the policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice by registered or certified mail to the Lessor. The dollar amount of liability insurance coverage shall be reviewed on a periodic basis and modified, if necessary, based upon escalating costs and limits for the uses as provided in this Agreement as compared to similar airports.

K. COMPLIANCE WITH LAW, RULES AND REGULATIONS. Lessee shall, at its sole expense, observe and comply with the ordinances, statutes, rules, and regulations of all governmental authorities including Lessor which are applicable to the conduct of Lessee's business and in addition, those rules, and regulations of the Lessor not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of the Lessee's breach of any terms or covenants contained within this Agreement shall be borne by Lessee. Lessee will ensure the integrity of the Airport perimeter security at all times. This includes ensuring all gates, to include pedestrian gates, remain locked at all times unless monitored by an employee of the Lessee. Personnel vehicles of Lessee's employees, customers or contractors will not be parked on the airside.

L. RENOVATIONS.

1. All proposed renovation, refurbishing, alterations, remodeling, and construction shall be reviewed and approved by the Director and may also have to be reviewed and approved by the City Building Official, to include obtaining a Building Permit from the City.
2. The parties agree that all renovations, refurbishments, improvements, additions, fixtures, and alterations to Leased Premises shall be deemed to be attached to the freehold and shall become property of the Lessor to the extent as if the Leased Premises and its renovations, refurbishments, improvements, additions, fixtures, and alterations had been erected and installed on the Leased Premises prior to the execution of this Agreement.
3. Lessee expressly assumes full responsibility for all damages and injuries that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, alteration, renovation, refurbishment, improvement, or maintenance of any building, pursuant to or under this Agreement, and shall indemnify Lessor against any and all claims arising from such actions.

PART SEVEN OBLIGATIONS OF LESSOR

A. OPERATION AS A PUBLIC AIRPORT. Lessor covenants and agrees that at all times it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.

B. ENTRY AND INSPECTION. Lessor shall have the right to enter upon and inspect the

Leased Premises at any reasonable time, with twenty-four (24) hours' notice during the term hereof for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The Lessor shall not, during the course of any such inspection, unreasonably interfere with the Lessee's use and enjoyment of the Leased Premises.

PART EIGHT DAMAGE OR DESTRUCTION OF LEASED PREMISES

If the Leased Premises shall be partially damaged by fire, flood, lightning, windstorm, or other force of the elements or by the public enemy or from any cause not caused by the Lessee or Lessee's agents, assigns, contractors, guests, or invitees, so as to adversely affect the Lessee's use of its exclusive space therein even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the Lessee at its own cost and expense. If damage caused shall be so extensive as to render the Lessee's exclusive space untenable, but nevertheless capable of being repaired and made tenantable within a period of sixty (60) days, the Lessee shall repair the damage at its own cost and expense. The rent payable shall be proportionately paid up to the time of such damage but shall thenceforth cease until such time as such building and space shall be restored. If the Leased Premises are completely destroyed or so damaged that it will and does remain untenable for a period of more than sixty (60) days, Lessee shall have the right to terminate this Agreement upon written notice to Lessor within sixty (60) days from the date of such damage or destruction. Nothing in this Article shall apply to damages to the Leased Premises caused by the acts of the Lessee, and Lessee shall, at its own cost and expense, promptly repair with due diligence all such damages resulting from its act of said character. Lessee shall not be obligated to expend more on repair or restoration than the amount of any insurance proceeds received by Lessee.

PART NINE TERMINATION OF AGREEMENT, ASSIGNMENT, AND TRANSFERS

- A. **TERMINATION.** This Agreement shall terminate without action by either party at the end of the initial term or any renewal term.
- B. **TERMINATION BY LESSEE.** Lessee may terminate this Agreement after:
 - 1. Material default by Lessor in the performance of a covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of sixty (60) days after receipt of written notice of default from Lessee. Unless Lessor is diligently attempting to remedy such default in which case Lessor shall be allowed such reasonable time as may be required.
 - 2. Upon Lessee giving ninety (90) days written notice to the Lessor pursuant to PART ELEVEN (G) of this Agreement and immediately upon or after the occurrence of either of the following events:
 - a. The failure or refusal of the Federal Aviation Administration (FAA) to

permit the Lessee to operate into, from, or through the Kissimmee Gateway Airport

- b. The duly enactment and implementation of a City, State, or Federal law, order, rule or regulation which is directly binding on the Leased Premises and the operation of the Lessee which directly results in the inability of the Lessee to use the Leased Premises for a period longer than one hundred eighty days (180) days during which time rent will abate.

C. EXERCISING LESSEE'S RIGHTS OF TERMINATION. Lessee may exercise such right of termination by written notice to Lessor at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the Lessor.

D. TERMINATION BY LESSOR. Lessor may terminate this Agreement in the event Lessee shall:

1. Be in arrears in the payment of the whole or any part of the rent or other fees, payments, or sums due for a period of sixty (60) days after written notice and the time such payments become due;
2. Make a general assignment for the benefit of creditors;
3. File a voluntary or involuntary petition in bankruptcy;
4. Abandon the Leased Premises;
5. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor of said default, unless Lessor is diligently attempting to remedy such default in which case Lessor shall be allowed such reasonable time as may be required;
6. Appoint or to cause the appointment of a receiver for Lessee;
7. Violate local, state, federal, or Lessor's laws, statutes, ordinances, rules, and regulations not inconsistent with the provisions of this Agreement and such default continues for a period of sixty (60) days after receipt of written notice from Lessor of said default.

E. WAIVER OF STATUTORY NOTICE TO QUIT. In the event Lessor exercises its option to terminate this Agreement upon the happening of any of the events set forth in Section D of this Article, Termination by Lessor, a notice of termination shall be sufficient to terminate this agreement. Upon such termination, Lessee agrees that it will forthwith surrender possession of the Leased Premises to Lessor. Lessor will be given access to leased premises to remove its property following termination.

- F. **SUBLETTING AND ASSIGNMENT.** Lessee may not rent or sublease the Leased Premises without the prior written consent of the Lessor consent which shall not be withheld, conditioned or delayed. Lessee may, with the prior written consent of Lessor, assign this Agreement; in such event, Lessee shall remain liable to Lessor for the remainder of the term of the Agreement to pay to Lessor any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the Lessor, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

PART TEN RIGHTS UPON TERMINATION

- A. **LEASED PREMISES.** It is the intent of this Agreement that the Leased Premises shall be and remain the property of Lessor during the entire term of this Agreement and thereafter.
- B. **REMOVAL OF PERSONAL PROPERTY.** Upon the expiration or termination of this Agreement, all buildings, improvements, and fixtures constructed or placed upon Leased Premises shall revert, free and clear of any mortgage or lien, to Lessor. At the termination of this Agreement for any reason, after payment of all rents and charges, Lessee shall have the right, within thirty (30) days thereafter to remove any of its office supplies, goods, furniture, machinery, equipment, and signs installed on the Lease Premises by Lessee, but shall repair at its own expense all damage caused by such removal. Any such personal property not removed by Lessee within such time shall become the property of the Lessor.
- C. **LANDLORD LIEN.** If the Lessee has not fully paid all the rents and charges pursuant to this Agreement, then the Lessor shall be entitled to a landlord lien for the purpose of securing the payment of all rents and charges. Lessor shall have the right to seize, hold, and liquidate such personal property possessed or owned by Lessee to satisfy any obligations of the Lessee and the costs incurred to perfect this landlord lien. Any excess funds from this liquidation shall be turned over to the Lessee.

PART ELEVEN GENERAL PROVISIONS

- A. **LESSOR'S RESERVED RIGHTS.**
1. City reserves the right: (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, and provided that City shall use reasonable efforts to preserve Lessee's rights hereunder, City shall be free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned by the making of such improvements, repairs, alterations and additions, unless such loss or damages are caused by the negligence or willful misconduct of the City, (ii) to establish such fees and charges for the use of the Airport by Lessee (excluding any additional charge for the use of the Leased Premises) and all others

similarly situated from time to time as City may deem advisable, and (iii) for itself and others to utilize and maintain any utility and drainage easements located on the Leased Premises, and (iv) to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Leased Premises and to grant necessary utility easements therefore, provided that in the exercise of such rights, Lessee's use of the Leased Premises and any Improvements shall not be unreasonably impaired and any damage to the Leased Premises or any Improvements caused by City as a result thereof shall be repaired without cost to Lessee.

2. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the terms relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be reimbursement to Lessor for federal funds for the development of the Airport.

- B. NON-INTERFERENCE WITH OPERATION OF AIRPORT. Lessee by accepting this Agreement expressly agrees for itself and its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event this covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the reasonable expense of Lessee.

Lessor shall maintain and keep in repair the landing area of the Airport and shall have the right to direct and control all activities of the Lessee in this regard.

- C. NONEXCLUSIVE RIGHT.

The Lessee expressly agrees, on behalf of itself and its successors and assigns that to the extent it has any rights under this Agreement to conduct any activity on the Airport property, such rights are nonexclusive and City has reserved the right to grant similar rights to others at the Airport. The provisions of this subsection shall not confer any rights on Lessee which have not been expressly granted to Lessee elsewhere in this Agreement.

- D. WAIVER OF JURY TRIAL, VENUE. It is mutually agreed by and between Lessee and Lessor 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. Venue of all actions shall be Osceola County, Florida.

- E. TAXES, LICENSES, AND PERMITS. Lessee shall pay all personal property taxes which may be assessed against merchandise, or other personal property belonging to the Lessee located on the Leased Premises, or other permitted portions of the Airport. In the event any real estate taxes are assessed against the land or improvements on the Leased Premises during the term of this Agreement, such taxes shall be paid by Lessee. Lessee shall obtain and pay for all license, permits, fees, or other authorization or charges as required under federal, state, or local laws and regulations insofar as they are necessary to comply with

the requirements of this Agreement and the privileges extended hereunder.

- F. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- G. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted, such notice shall be served by Certified or Registered Mail with return receipt, addressed to the Lessor in following manner:

Director of Aviation
Kissimmee Gateway Airport
401 N. Dyer Boulevard, Suite 101
Kissimmee, FL 324741-4613

and notices, consents and approvals to addressed to Lessee in the following manner:

Sandpiper Florida Real Estate Holdings, LLC
3955 Merlin Drive
Kissimmee, FL 34741

Business Manager
Sandpiper Florida Real Estate Holdings, LLC
3955 Merlin Drive
Kissimmee, FL 34741

William M. Whelan
c/o Whelan Associates
70 N. Second Street
New Bedford, MA 02740

Paul T Prew, Esquire
23 Norfolk Avenue
S. Easton, MA 02375

Mark Shub, Esquire
Schub & Associates, P.C.
696 Smith Neck Road
South Dartmouth, MA 02748

or such other addresses as the parties may designate to each other in writing.

- H. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- I. SUCCESSORS AND ASSIGNS. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- J. AMERICANS WITH DISABILITIES ACT. As used herein, "ADA" shall mean the

Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), as amended from time to time, and the regulations promulgated thereunder. Lessee shall be responsible for any actions required to comply with ADA (including, without limitation, any actions required by the City to enable the City to meet its ADA obligations with respect to Lessee's operations) as a result of (i) any Improvements or modifications which it makes to the Leased Premises, (ii) its particular use of the Leased Premises and (iii) any changes to the ADA after the Effective Date. Any modification to the Leased Premises, which Lessee is required to make under this Section, shall be performed to the satisfaction of the City. In the event the Lessee shall fail to construct or modify any Improvements to the Leased Premises as required under this Section, the City shall have the right to enter the Leased Premises and perform such modifications on the Lessee's behalf, without liability for any disruption to the Lessee's activities therein during the completion of or as a result of such modifications, and the cost of such modifications shall be invoiced to the Lessee and shall be promptly paid by the Lessee to the City as additional Rent hereunder.

- K. ATTORNEY FEE PROVISION. In the event that any proceeding at law or in equity arises hereunder or in connection herewith (including any appellate proceeding or bankruptcy proceeding) the prevailing party shall be awarded costs, reasonable expert fees and reasonable Attorney's Fees incurred in connection therewith.
- L. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- M. PUBLIC ENTITIES CRIME NOTICE. The Lessee acknowledges the following notice:

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 \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.
- N. BROKER LANGUAGE. City and Lessee represent and warrant to each other that they have dealt with no broker in connection with this Agreement and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.
- O. ESTOPPEL PROVISION. At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to

the best of the responding party's knowledge, the requesting party is not in default under this Agreement (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Agreement and the relationship between City and Lessee as may reasonably be requested. In addition, at the City's request, Lessee shall promptly execute and return to City a short form memorandum of this Agreement which may be recorded in the public records of Osceola County, Florida in City's sole discretion.

- P. ENGINE RUNUPS. Except to the extent that noise restrictions of any governmental City having jurisdiction thereover may preclude or limit the same, Lessee shall have the right to conduct engine runups at the Leased Premises, and/or the nonexclusive right in common with others, to conduct engine runups on the Airport at such location or locations as City may designate from time to time for such purposes, in reasonable proximity to the Leased Premises on the Airport, and subject to the reasonable rules and regulations of City.
- Q. EFFECTIVE DATE. The Effective Date shall mean the date that the last party fully executes this Agreement.

PART TWELVE ENVIRONMENTAL MATTERS

- A. STORAGE TANKS.
1. Lessee agrees to comply with all applicable federal, state, and local government regulations regarding above and underground storage tanks effective on the date of execution of this Agreement and as hereafter may be enacted or amended. Specifically, Lessee agrees that all regulated above or underground storage tanks owned or operated by it and located on the Leased Premises or which might discharge on or under the Leased Premises, shall be registered with the appropriated federal, stated, and local authorities; shall be constructed of approved materials; shall, if existing, be appropriately retrofitted pursuant to current federal, state, and local requirements; shall have an approved method of leak detection; and shall be made available for compliance inspection at all times during normal business hours. ("Approved" for purposes of this provision shall mean: "determined to meet applicable federal and state environmental regulatory requirements.") Further, Lessee agrees to properly record, maintain, and reconcile all inventory record required by appropriate federal, state, and local regulations and to make such records available for inspection at the Leased Premises at all times during normal business hours.
 2. Lessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. 280 by obtaining at least one million dollars (\$1,000,000.00) of third-party liability insurance and one million dollars (\$1,000,000.00) of restoration (cleanup) insurance as coverage for all petroleum storage tank activities conducted by Lessee on or adjacent to the Leased Premises. Such insurance must be maintained in effect during the entirety of the term of this Agreement and proof of such insurance must be provided to Lessor prior to the operation or installation of any regulated above

or underground petroleum storage tanks on or about the Leased Premises. This insurance requirement may be satisfied by qualification for and compliance with the Florida Petroleum Liability Insurance and Restoration Program as established by Section 376.3072, Florida Statutes.

- B. INDEMNIFICATION. Lessee agrees to indemnify and hold the City, and the members, officers, employees and agents of each, harmless from and against all liabilities, claims, judgment, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from Lessee's use, occupancy, operation or maintenance of the Leased Premises, including the work, acts, or omissions of its officers, agents, employees, contractors, subcontractors, operators, and sub-lessees, except to the extent caused by the City's negligence or by the joint negligence of the City and any person other than Lessee, its officers, agents, employee, contractors, subcontractors, operators, or sub-lessees. City will refer to Lessee, promptly upon notice thereof, any claim made, or suit instituted against it, which, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by the Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount.

C. HAZARDOUS MATERIALS COVENANTS.

1. Lessee hereby represents and warrants to and for the benefit of the disposal of any Hazardous Materials (hereinafter defined) upon the Leased Premises or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). From purposes hereof the term "Hazardous Materials" shall mean and refer to (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. *6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 24, *6901, et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the Leased Premises is prohibited by the City that the Leased Premises will not use or operated in any manner that will result in the storage use treatment, manufacture, or any applicable environmental laws or regulations ("Laws") or by any other legal requirements affecting the Leased Premises; (viii) petroleum-based materials (with the exception of tires affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any laws or by any other legal requirements affecting the Leased Premises. The term "Hazardous Materials Contamination" shall mean and refer to the contamination of the Leased Premises, soil, surface water, ground water, air, or other elements on or off the buildings,

facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Leased Premises.

2. In addition to and without limiting the generality of any other provisions of this Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any damages, expenses, fees, claims, demands, causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial, and corrective work and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Lessee or Lessee's employees, agents, delegates, invitees, licensees, concessionaires, contractors, or representatives, of any Hazardous materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises caused solely by Lessee. The provisions of this Section shall survive any acquisition of the Leased Premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, liabilities, and all losses.
3. Lessor shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists prior to the date of this Agreement. The Parties hereby acknowledge that City shall conduct a Phase I report of the Leased Premises, prior to the construction of any improvements by the Lessee. The Lessee shall not be obligated to take possession of the property, until completion of the Phase I, and any remediation work identified by this report or a Phase II report has been completed by Lessor. The Phase I conducted shall act as the "Baseline" to establish the environmental condition of the Leased Premises at the time of the commencement of possession by Lessee.
4. Within thirty (30) days of the expiration of this Agreement, Lessor shall prepare an environmental report equivalent to Phase I and Phase II, to include borings to establish the environmental condition of the Leased Premises as of expiration of the Agreement. In the event it is determined during the Agreement or at the expiration of this Agreement, that the Leased Premises contains pollutants in amounts which violate any applicable Federal, State or local governmental standards, Lessee shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists after the Baseline. To the extent permitted by applicable law, Lessee shall indemnify defend and hold the City completely harmless from and against any and all liabilities (including, but not limited to, liability under CERCLA and any other environmental statute, law, ordinance, regulation, rule or order), losses, suits, claims, demands, judgments, fines, damages, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to court costs, reasonable expert fees and reasonable Attorneys' Fees) with respect to any

hazardous substances existing at the Leased Premises prior to expiration of the Agreement.

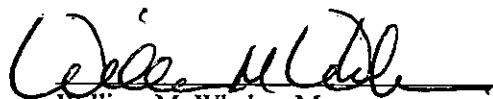
**PART THIRTEEN
PRIOR LEASES**

Both parties acknowledge and agree that there exist prior leases and addendums for parcels W3 and W4 with Stallion 51 dated December 7, 1993 and January 6, 1998; and Sandpiper Turbine, LLC dated March 19th, 2019. It is the intent and desire of the parties to terminate these leases upon the effective date of this lease.

Signature page to follow

IN WITNESS THEREOF, the parties now sign, agree to, and enter into this Agreement on the day and year first above written.

SANDPIPER FLORIDA REAL ESTATE HOLDINGS, LLC


William M. Whelan, Manager

State of Florida
County of Osceola

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 12 day of December, 2021, by William M. Whelan, as Manager of Sandpiper Florida Real Estate Holdings, LLC, a limited liability company organized under the laws of the State of Florida, who is ☒ personally known to me or ☐ who has produced _____ as identification, and acknowledged before me that they executed the foregoing instrument as such officer in the name and on behalf of the corporation.

Seal:



Notary Public, State of Florida



Robert Couch
Notary Public
State of Florida
Comm# GG987235
Expires 5/11/2024

CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Mayor-Commissioner

ATTEST:

City Clerk

Approved as to form and legality

City Attorney



Exhibit "B"
FAA Required Contract Provisions
GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee"), agrees as follows, if and to the extent applicable as a matter of law:

Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Lesseees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-Lessee or supplier will be notified by the Lessee of the Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: If and to the extent applicable as a matter of law, the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information

required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-Lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations, listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, the Aviation City will have the right to terminate the Agreement and to enter, re-enter, and repossess

said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.
2. In the event of breach of any of the above nondiscrimination covenants, the Aviation City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

**TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS
AND AUTHORITIES**

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law, such may be amended from time to time upon thirty (30) days' advanced written notice to Lessee:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (Prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

ITEM 7.M**COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS ROUND 3 (CDBG-CV 3)
FUNDING AGREEMENT****Request**

Acceptance of the allocation of the Community Development Block Grant Coronavirus Round 3 (CDBG-CV3) HUD funds in the amount \$737,760, approval to execute the funding agreement, and approval for the Mayor, City Manager or Development Services Director to execute any CDBG-CV related documents and sub-recipient agreements according to the levels of signature authority consistent with the City's Procurement Policy after review by the City Attorney or her designee.

Explanation

The City Commission accepted the allocation of the first round of CDBG-CV funds in the amount of \$426,609 on May 19, 2020. Soon after, the City was notified of another allocation (Round 3) in the amount of \$737,760. Final approval of the funds was contingent on the City going through the process of amending the corresponding Annual Action Plan to include the Cares Act funds from Round 3. The Third Substantial Amendment to the Program Year 2019 Annual Action Plan was approved by the City Commission on July 20, 2021.

All of the funds from Round 3 are being allocated to the Homeless Facility project, which will serve the housing needs of the chronic homeless and those that are at risk of homelessness. The attached funding agreement is required to be executed and returned to HUD in order to use the CDBG-CV3.

Recommendation

Staff recommends acceptance of the allocation of the Community Development Block Grant Coronavirus Round 3 (CDBG-CV3) HUD funds in the amount \$737,760, approval to execute the funding agreement, and approval for the Mayor, City Manager or Development Services Director to execute any CDBG-CV related documents and sub-recipient agreements according to the levels of signature authority consistent with the City's Procurement Policy after review by the City Attorney or her designee.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Kissimmee CARES Act CDBG-CV3 Grant Agreement
2. CDBG-CV Special Grant Conditions

Funding Approval/Agreement

Title I of the Housing and Community
Development Act (Public Law 930383)
HI-00515R of 20515R

U.S. Department of Housing and Urban Development Page 249 of 622

Office of Community Planning and Development
Community Development Block Grant Program

OMB Approval No. 2506-0193
exp 5/31/2018

1. Name of Grantee (as shown in item 5 of Standard Form 424) Kissimmee	3a. Grantee's 9-digit Tax ID Number 596000348	3b. Grantee's 9-digit DUNS Number 070481952
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 101 N. Church St. Kissimmee, FL 34741-5034	4. Date use of funds may begin 07/17/2020	
	5a. Project/Grant No. 1 B-20-MW-12-0051	6a. Amount Approved \$737,760
	5b. Project/Grant No. 2	6b. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Lisa Hill	Grantee Name (Contractual Organization) Kissimmee (City Of Kissimmee)		
Title CPD Director	Title		
Signature  X	Date 10/29/2021	Signature X	Date (mm/dd/yyyy)

7. Category of Title I Assistance for this Funding Action: Entitlement, Sec 106(b)	8. Special Conditions (check one) ☐ None ☒ Attached	9a. Date HUD Received Submission 08/11/2021	10. check one ☐ a. Orig. Funding Approval ☒ b. Amendment Amendment Number
		9b. Date Grantee Notified 10/29/2021	
		9c. Date of Start of Program Year 07/17/2020	
11. Amount of Community Development Block Grant			
a. Funds Reserved for this Grantee		FY (2020)	
b. Funds now being Approved		\$1,164,369	
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved N/A	12b. Name and complete Address of Public Agency City Of Kissimmee 101 N. Church St. Kissimmee, FL 34741-5034
Loan Guarantee Acceptance Provisions for Designated Agencies: The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.	12c. Name of Authorized Official for Designated Public Agency
	Title
	Signature X

HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											
			Y					Project Number		Amount		
			Y					Project Number		Amount		
Date Entered PAS (mm/dd/yyyy)		Date Entered LOCCS (mm/dd/yyyy)		Batch Number		Transaction Code		Entered By		Verified By		

Additional CDBG-CV Requirements

In addition to the terms and conditions in the Funding Approval/Agreement, the following requirements apply to Grantees receiving CDBG-CV funds in accordance with the Coronavirus Aid, Relief and Economic Security Act (CARES Act) (Pub. L. 116-136).

- 1) The Grantee agrees to comply with the requirements in the CARES Act that apply to CDBG-CV grants and must use the CDBG-CV grant funds to prevent, prepare for and respond to coronavirus.
- 2) The grantee agrees to comply with the requirements of the Housing and Community Development Act of 1974 (42 USC 5301 et seq.) and implementing regulations at 24 CFR part 570, as now in effect and as may be amended from time to time, and as modified by the rules, waivers and alternative requirements published by HUD from time to time. Rules, waivers and alternative requirements of Federal Register notices applicable to CDBG-CV grants are hereby incorporated into and made a part of the grant agreement.
- 3) The Grantee may use CDBG-CV funds as reimbursement for previously incurred costs, provided that those costs are allowable and consistent with the CARES Act's purpose to prevent, prepare for and respond to coronavirus.
- 4) The grantee agrees to establish and maintain adequate procedures to prevent any duplication of benefits as required by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155), as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442).
- 5) The period of performance for the funding assistance specified in the Funding Approval/Agreement ("Funding Assistance") shall be six years. It shall begin on the date specified in item 4 in the Funding Approval/Agreement and shall end six years later, on the month and day specified in item 4. The Grantee shall not incur any obligations to be paid with the Funding Assistance after this period of performance.
- 6) The Recipient shall attach a schedule of its indirect cost rate(s) in the format set forth below to the executed Funding Approval/Agreement that is returned to HUD. The Recipient shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receives from the Recipient shall be incorporated herein and made a part of this Funding Approval/Agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

Administering Department/Agency	Indirect cost rate	Direct Cost Base
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

Instructions: The Recipient must identify each agency or department of the Recipient that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR §200.414(f)), and the type of direct cost base to which the rate will be applied (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rates for subrecipients.

- 7) In addition to the conditions contained in the Funding Approval/Agreement (form HUD 7082), the grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS); the System for Award Management (SAM.gov.); the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and General Contractor Registration; and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.

- 8) The grantee shall ensure that no CDBG-CV funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water- related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118) shall be considered a public use for purposes of eminent domain.

- 9) The Grantee or unit of general local government that directly or indirectly receives CDBG-CV funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.
- 10) E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.
- 11) CDBG-CV funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." (Source – This condition is included as requirement on the use of fiscal year 2020 CDBG funds by the Community Development Fund heading, Department of Housing and Urban Development Appropriations Act, 2020, Public Law 116-94, and is made applicable to this grant by the CARES Act).

ITEM 7.N**AMENDMENTS TO THE HOME CONSORTIUM PROJECT AGREEMENT (THIRD AMENDMENT) AND THE HOME PROGRAM AGREEMENT (FOURTH AMENDMENT) FOR THE REHABILITATION OF THE OAK LEAF LANDINGS APARTMENTS****Request**

Commission approval of the Third Amendment to the HOME Consortium Project Agreement between Osceola County and the City of Kissimmee and the Fourth Amendment to the HOME Project Agreement between the City of Kissimmee, Osceola Council on Aging, Inc., and Kissimmee Oaks Housing I, Inc. for the rehabilitation of the Oak Leaf Landings Apartments.

Explanation

As a member of the Osceola County HOME Consortium, the City of Kissimmee receives federal HOME funds in order to carry out eligible activities. Each time the City awards HOME funds to a project, the City is required to enter into an agreement with Osceola County (Consortium lead agency) to describe how the City intends to use the HOME funds on the particular project. The agreement, known as the Consortium Project Agreement, provides information about the project and outlines all of the specific project requirements. This is in addition to the required HOME Project Agreement with the developer/owner.

The City of Kissimmee has allocated HOME funds in the amount of \$159,435 to the Council on Aging, Inc. to rehabilitate the Oak Leaf Landings Apartments, a 50-unit elderly housing complex, as a part of the Consortium Project Agreement. The initial allocation of funds was approved by the City Commission on October 15, 2019 and amended on November 3, 2020. The project has experienced significant material shortages as a result of the pandemic. Therefore, staff is requesting an extension of the project term from December 31, 2021 to February 28, 2022 to allow for additional time for project completion. This change means the Consortium Project Agreement between Osceola County and the City of Kissimmee as well as the HOME Project Agreement between the City of Kissimmee and the developer must both be amended accordingly.

Recommendation

Approve the Third Amendment to the HOME Consortium Project Agreement between Osceola County and the City of Kissimmee and the Fourth Amendment to the HOME Project Agreement between the City of Kissimmee, Osceola Council on Aging, Inc., and Kissimmee Oaks Housing I, Inc. for the rehabilitation of the Oak Leaf Landings Apartments.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Consortium Agreement (Third Amendment) Oak Leaf Landings
2. Fourth Amended Project Agreement Oak Leaf Landings-executed

**THIRD AMENDMENT TO THE OSCEOLA HOME CONSORTIUM
PROJECT AGREEMENT BETWEEN OSCEOLA COUNTY AND
THE CITY OF KISSIMMEE
OAK LEAF LANDINGS APARTMENTS**

This **THIRD AMENDMENT TO THE OSCEOLA HOME CONSORTIUM PROJECT AGREEMENT** (hereinafter referred to as the "First Amended Agreement") is entered into on _____, 2021, by and between the OSCEOLA COUNTY, a political subdivision of the state of Florida, hereinafter referred to as the "COUNTY", and the CITY OF KISSIMMEE, a municipality, hereinafter referred to as the "CITY".

WITNESSETH:

WHEREAS, on October 25, 2019, Osceola County and the City of Kissimmee entered into the Osceola HOME Consortium Project Agreement between Osceola County and the City of Kissimmee Oak Leaf Landings Apartments (Original Agreement) for the rehabilitation of fifty (50) units in the amount of Ninety-Two Thousand Two Hundred Fifty-Four Dollars (\$92,254.00) of CHDO Set Aside HOME funds; and

WHEREAS, the funding for this project increased as a result of two subsequent amendments made to the project agreement between the City and the Osceola Council on Aging (developer) and Kissimmee Oaks Housing I, Inc. (owner): the first dated February 18, 2020 increased the allocation by Forty-Six Thousand Nine Hundred Thirty-Four Dollars (\$46,934.00), the second dated November 3, 2020 increased the total allocation by Twenty Thousand Two Hundred Forty-Seven Dollars (\$20,247.00); and the third dated June 15, 2021; and

WHEREAS, the City has agreed to extend the project term because the construction work continues to be delayed due to high demand and shortage of materials.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and value considerations, the receipt and sufficiency of which are hereby acknowledged, each Party hereby promises to the other as follows:

1. All references in the Original Agreement and the First Amendment to the expenditure deadline of December 31, 2021 shall be extended to February 28, 2022.
2. All other provisions of the Original Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Second Amendment to the Original Agreement effective the ____ day of _____, 2021.

**BOARD OF COUNTY COMMISSIONERS
OSCEOLA COUNTY, FLORIDA**

By: _____

County Manager/Designee

Print: _____

Date: _____

CITY OF KISSIMMEE

By: _____

Title: _____

Print: _____

Date: _____

ATTEST:

By: _____

Linda Hansell, City Clerk

**FOURTH AMENDMENT TO THE HOME PROGRAM AGREEMENT BETWEEN
THE CITY OF KISSIMMEE AND OSCEOLA COUNCIL ON AGING, INC. AND
KISSIMMEE OAKS HOUSING I, INC., DBA OAK LEAF LANDINGS
OAK LEAF LANDINGS APARTMENTS**

This **Fourth Amendment to the HOME Program Agreement** (hereinafter referred to as the “Fourth Amended Agreement”) is entered into on December 21, 2021, by and between the **City of Kissimmee**, a Florida municipal corporation with a principal address of 101 Church Street, Florida 34741 (hereinafter referred to as “City”), **Osceola Council on Aging**, a Florida not for profit organization, with a principal address of 700 Generation Point, Kissimmee, Florida 34744 (hereinafter referred to as “Developer”), and **Kissimmee Oaks Housing I Inc., DBA Oak Leaf Landings**, with a principal address of 2350 N. Central Avenue, Kissimmee, Florida 34741 (hereinafter referred to as “Owner”).

WITNESSETH:

WHEREAS, on October 15, 2019 City, Developer, and Owner entered into HOME Program Agreement Between the City of Kissimmee and Osceola County on Aging, Inc. and Kissimmee Oaks Housing I, Inc., d/b/a Oak Leaf Landings Oak Leaf Landings Apartments (Original Agreement); and

WHEREAS, on February 18, 2020 the parties entered into the First Amended Home Program Agreement Between the City of Kissimmee and Osceola Council on Aging, Inc. and Kissimmee Oaks Housing I, INC., DBA Oak Leaf Landings Oak Leaf Landings Apartments for additional funding in the amount of Forty-Six Thousand Nine Hundred Thirty-Four Dollars (\$46,934.00); and

WHEREAS, on November 3, 2020, the City Commission approved to provide an additional Twenty Thousand Two Hundred Forty-Seven Dollars (\$20,247.00) to install new cabinets, countertops, and appliances in the community kitchen; and

WHEREAS, on June 15, 2021, the City Commission approved to extend the expenditure deadline of December 31, 2021; and

WHEREAS, the construction material shortages due to COVID-19 continues to create a backlog making it impossible to meet schedule requirements and therefore the City Commission seeks to again extend the term of the Original Agreement and its subsequent Amendments; and

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and value considerations, the receipt and sufficiency of which are hereby acknowledged, each party hereby promises to the other as follows:

1. All references in the Original Agreement, First, Second, and Third Amended Agreements to the expenditure deadline of June 30, 2021 shall be extended to February 28, 2022.
2. All other provisions of the Original Agreement remain in full force and effect.

IN WITNESS WHEREOF the Parties have executed this Fourth Amendment to the Original Agreement, each upon the date set forth next to his/her name.

Signed in the presence of two witnesses:

John Moxley
Signature

Print Name:

John Moxley

[Signature]

Signature

Print Name:

Reyna Astacio

DEVELOPER

Osceola Council on Aging, Inc.

a Florida not for profit agency

By:

[Signature]

Name:

Wendy Ford

Title:

CEO

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF OSCEOLA

THE FOREGOING was acknowledged before me this 13 day of December, 2021, by Wendy Ford, as CEO of Osceola Council on Aging, Inc., a Florida not for profit agency. He/She ☐ is personally known to me or ☒ who has produced

DL F630-893-69-749-0 as identification.



NOTARY PUBLIC

Print Name: Catherine Finneran

My Commission Expires: 05/08/2025

Signed in the presence of two witnesses:

John Moxley
Signature

Print Name:

John Moxley

[Signature]

Signature

Print Name:

Reyna Astacio

Kissimmee Oaks Housing I, I

Oak Leaf Landings, a subsidiary organization

By:

[Signature]

Name:

Wendy Ford

Title:

CEO

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING was acknowledged before me this 13 day of December, 2021 by Wendy Ford, as CEO of Kissimmee Oaks Landings I, Inc., DBA Oak Leaf Landings, a subsidiary organization. He/She ☐ is personally known to me or ☒ who has produced DL F630-89369.7490 as identification.

Catherine Finneran

NOTARY PUBLIC

Print Name Catherine Finneran

My Commission Expires: 05/06/2025



ATTEST:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation

By: _____
Linda Hansell, City Clerk

By: _____
Mayor
Date: _____

ITEM 7.0**PROFESSIONAL ENGINEERING CONTINUING SERVICES CONTRACT EXTENSIONS****Request**

Approval to extend the Professional Engineering Continuing Services Contracts with the following firms: (1) Askey Hughey, Inc., (2) RS&H, Inc., (3) Burgess & Niple, Inc., (4) T. Y. Lin International, Inc., and (5) CDM Smith, Inc. for one year.

Explanation

On March 20, 2018, the City Commission approved the selection of (1) Askey Hughey, Inc., (2) RS&H, Inc., (3) Burgess & Niple, Inc., (4) T. Y. Lin International, Inc., and (5) CDM Smith, Inc. for the Professional Engineering Continuing Services Contract to provide engineering services on a task basis. These contracts were for two (2) years with the option of three (3) one-year extensions. Staff would like to request approval to extend these contracts for another one-year with a new expiration date of March 20, 2022.

Recommendation

Staff recommends City Commission approval to extend the Professional Engineering Continuing Services Contracts with the following firms: (1) Askey Hughey, Inc., (2) RS&H, Inc., (3) Burgess & Niple, Inc., (4) T. Y. Lin International, Inc., and (5) CDM Smith, Inc. The extension is for a one-year renewal with a new expiration date of March 20, 2022.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. Engineering Contract Extension-2021-Askey Hughey
2. Engineering Contract Extension-2021-Burgess & Niple
3. Engineering Contract Extension-2021-CDM Smith
4. Engineering Contract Extension-2021-RSH
5. Engineering Contract extension-2021-T.Y. Lin International
6. Fully Executed CDM Smith Contract (3-20-2018) (2)
7. Fully Executed RS&H, INC. Contract (03-20-2018)
8. Fully Executed T.Y. LIN Contract (03-20-2018)
9. Fully Executed BURGESS NIPLE (03-20-2018)
10. Fully Executed ASKEY HUGHEY INC. Contract (03-20-2018)

CITY OF KISSIMMEE 1883

April 23, 2021

James Askey, PE
25 E. 13th Street, Suite 9
St. Cloud, FL 34769

Re: Continuing Engineering Services Contract Extension

Dear Mr. Askey:

On March 20, 2018 the City of Kissimmee Commissioners approved the Agreement between The City of Kissimmee and Askey Hughey, Inc. for Continuing Engineering Services. Should you wish to continue this Agreement from "March 20, 2021 through March 20, 2022" with the City please sign below in blue ink and email a scanned color copy of the agreement back to us. A current Certificate of Liability should also be sent to us for our records as soon as possible.

If you have any questions please call us at 407-518-2169.

Sincerely,

Ashley Willis, P.E.
City Engineer
Public Works & Engineering

Signed

PRESIDENT

Title

5-13-2021

Date

Signed

Mayor

Title

Date



Public Works & Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165



April 23, 2021

Scott D. Perfater, PE
1800 Pembroke Drive, Suite 265
Orlando, FL 32810

Re: Continuing Engineering Services Contract Extension

Dear Mr. Perfater:

On March 20, 2018 the City of Kissimmee Commissioners approved the Agreement between The City of Kissimmee and Burgess & Niple, Inc. for Continuing Engineering Services. Should you wish to continue this Agreement from "April 23, 2021 through April 23, 2022" with the City please sign below in blue ink and email a scanned color copy of the agreement back to us. A current Certificate of Liability should also be sent to us for our records as soon as possible.

If you have any questions please call us at 407-518-2169.

Sincerely,

Ashley Willis, P.E.
City Engineer
Public Works & Engineering

Signed

Executive Vice President

Title

May 12, 2021

Date

Signed

Mayor

Title

Date



Public Works & Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165



April 23, 2021

Mr. Paul Staes, PE
2002 N. Lois Avenue, Suite 200
Tampa, FL 33607

Re: Continuing Engineering Services Contract Extension

Dear Mr. Staes:

On March 20, 2018 the City of Kissimmee Commissioners approved the Agreement between The City of Kissimmee and CDM Smith, Inc. for Continuing Engineering Services. Should you wish to continue this Agreement from "March 20, 2021 through March 20, 2022" with the City please sign below in blue ink and email a scanned color copy of the agreement back to us. A current Certificate of Liability should also be sent to us for our records as soon as possible.

If you have any questions please call us at 407-518-2169.

Sincerely,

Ashley Willis, P.E.
City Engineer
Public Works & Engineering

Signed

Sr. Client Service Leader

Title

5/04/2021

Date

Signed

Mayor

Title

Date



Public Works & Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165



April 23, 2021

Mr. Paul W. Markel, PE
301 E. Pine St, Suite 350
Orlando, Florida 32801

Re: Continuing Engineering Services Contract Extension

Dear Mr. Markel:

On March 20, 2018 the City of Kissimmee Commissioners approved the Agreement between The City of Kissimmee and RS&H for Continuing Engineering Services. Should you wish to continue this Agreement from "March 20, 2021 through March 20, 2022" with the City please sign below in *blue* ink and email a scanned color copy of the agreement back to us. A current Certificate of Liability should also be sent to us for our records as soon as possible.

If you have any questions please call us at 407-518-2169.

Sincerely,

Ashley Willis, P.E.
City Engineer
Public Works & Engineering

Signed

Vice President

Title

May 4, 2021

Date

Mayor

Title

Date



Public Works & Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165



April 23, 2021

Mr. Ramfis Morales, PE
T.Y. Lin International
225 East Robinson Street, Suite 490
Orlando, Florida 32801

Re: Continuing Engineering Services Contract Extension

Dear Mr. Morales:

On March, 20, 2018 the City of Kissimmee Commissioners approved the Agreement between The City of Kissimmee and T.Y. Lin International for Continuing Engineering Services. Should you wish to continue this Agreement from "March 20, 2021 through March 20, 2022" with the City please sign below in blue ink and email a scanned color copy of the agreement back to us. A current Certificate of Liability should also be sent to us for our records as soon as possible.

If you have any questions please call us at 407-518-2169.

Sincerely,

Ashley Willis, P.E.
City Engineer
Public Works & Engineering

Signed
Kevin S. Ducharme

Vice President

Title

May 5, 2021

Date

Mayor

Title

Date



Public Works & Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND CDM SMITH, INC.
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

Page 265 of 622

THIS AGREEMENT is made and entered into this 20th day of March, 2018 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **CDM SMITH, INC.** whose address is 75 State St. #701, Boston, Massachusetts 02109, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2017- 010, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that **CDM SMITH, INC.** is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 ADDITIONAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER's services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:

- A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
- B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.

4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for

professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN ENGINEER'S employees as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 INVOICE PROCESSING

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 Public Works & Engineering Department
 City of Kissimmee
 101 N. Church Street
 Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.5 **ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT**

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER shall be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 **WORK COMMENCEMENT**

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 **IMPLEMENTATION SCHEDULE**

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 **TIME FOR COMPLETION**

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 **GENERAL**

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

- 6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;
- 6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to

the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:
Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

CDM SMITH, INC.
Mr. Richard Rocktoff, P.E.
75 State St. #701,
Boston, Massachusetts 02109

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0

herein.

- 8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the DESIGN ENGINEER requesting that the DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

- 8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or
- 8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.
- 8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

- 8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.
- 8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the

work on such documents has been completed or is in progress.

8.6 **SUSPENSION**

8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the DESIGN ENGINEER's services hereunder, the CITY shall so notify the DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 **GENERAL**

The DESIGN ENGINEER shall indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the DESIGN ENGINEER and other persons employed or utilized by the DESIGN ENGINEER in the performance of the contract.

9.2 **INSURANCE**

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that

prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 WORKERS' COMPENSATION

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 COMPREHENSIVE GENERAL LIABILITY

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 COMPREHENSIVE AUTOMOBILE LIABILITY

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 PROFESSIONAL LIABILITY INSURANCE

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mr. Kerrith Fiddler
 Director of Public Works & Engineering
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made

prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, first prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

- 12.1 The DESIGN ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the DESIGN ENGINEER, to solicit or secure this Agreement and that the DESIGN ENGINEER has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the DESIGN ENGINEER any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making of this Agreement.
- 12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as

justification for immediate termination of this Agreement under the provisions of Section 8.1.

- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.
- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 Time is of the essence of this Agreement.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES

20.1 CLAIMS AND DISPUTES

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 WAIVER OF JURY TRIAL; ATTORNEY'S FEES

It is mutually agreed by and between City and Owner 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.

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

CDM SMITH, INC.

By: R. Rockoff
Richard Rockoff, PE
 Title: Client Service Leader
 Date: 3-27-18

STATE OF FLORIDA)
 COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 27 day of March, 2018,
 by Richard Rockoff, as CSL of CDM Smith, Inc. a Florida corporation, who is
 personally known to me or has produced identification.

Notary Seal:

Notary: J. K. Carter

Print Name: Jennifer K. Carter

My Commission Expires: 06/19/2021



CITY OF KISSIMMEE

Jose Alvarez, Mayor-Commissioner

Attest

Linda S. Hansell
 Linda Hansell, City Clerk

Approved as to form and legality

DT Smith
 City Attorney

EXHIBIT A**SCOPE OF SERVICES**

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

EXHIBIT B

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:								
DATE:	AMENDMENT:								
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:									
DESCRIPTION OF ASSIGNMENT:									
FORM OF COMPLETED DELIVERABLES:									
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.									
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.									
Previous Contract Total Dollars:	\$								
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	☐ +								
NET CONTRACT TOTAL DOLLARS:									
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Accepted By: _____ (signature) </td> <td style="width: 50%; vertical-align: top;"> Requested By: _____ (signature) </td> </tr> <tr> <td style="vertical-align: top;"> Title/Position: _____ </td> <td style="vertical-align: top;"> Approved By: _____ (signature) </td> </tr> <tr> <td style="vertical-align: top;"> PW Director: _____ (signature) </td> <td style="vertical-align: top;"> City Commission Approval Date: _____ </td> </tr> <tr> <td colspan="2" style="vertical-align: top;"> Approved as to Form and Legality: _____ (signature) </td> </tr> </table>		Accepted By: _____ (signature)	Requested By: _____ (signature)	Title/Position: _____	Approved By: _____ (signature)	PW Director: _____ (signature)	City Commission Approval Date: _____	Approved as to Form and Legality: _____ (signature)	
Accepted By: _____ (signature)	Requested By: _____ (signature)								
Title/Position: _____	Approved By: _____ (signature)								
PW Director: _____ (signature)	City Commission Approval Date: _____								
Approved as to Form and Legality: _____ (signature)									

EXHIBIT C
HOURLY RATE SCHEDULE

Exhibit C
Hourly Rate Schedule

CDM Smith

<u>Job Class</u>	<u>Hourly Rate</u>
Project Manager	\$223.57
Chief Engineer	\$243.26
Sr. Engineer	\$214.24
Engineer	\$105.46
Engineer Intern	\$90.24
Scientist	\$142.97
Contract Administrator	\$89.65
Clerical	\$63.71



2018 Geotechnical Services Fee Schedule

Professional Rates					
Item	Unit	Cost	Item	Unit	Cost
Principal	hour	\$250.00	Student Intern	hour	\$50.00
Senior Professional	hour	160.00	Senior Engineering Technician	hour	80.00
Project Manager	hour	140.00	Engineering Technician	hour	60.00
Project Professional	hour	120.00	Draftsman	hour	80.00
Staff Professional	hour	100.00	GIS Specialist	hour	100.00
Intern Professional	hour	85.00	Secretary	hour	60.00

Field Services					
Truck Rig Mobilization	each	\$500.00	Ground Penetrating Radar (2 person)	hour	\$350.00
Mud Bug Rig Mobilization	each	700.00	Drill Rig and Crew – Truck/Mud Bug (2 person)	hour	220.00
CPT Rig Mobilization	each	1000.00	Drill Rig and Crew – Truck/Mud Bug (3 person)	hour	300.00
Track Rig Mobilization	each	4,000.00	Drill Rig and Crew – Track/Barge (3 person)	hour	450.00
Barge/Amphibious Mobilization	each	10,000.00	Field Permeability (0 – 10 ft) – Truck	each	350.00
Soil Survey/Coring/GPR Mobilization	each	350.00	Field Permeability (10 – 25 ft) – Truck	each	400.00
Support Boat Mobilization	each	500.00	Double Ring Infiltrometer	each	600.00
Support Truck	day	150.00	Field Vane Shear Strength	each	425.00
Support Boat	day	200.00	Pavement Cores (no MOT w/base check)	each	150.00
Coring Machine	day	150.00	Pavement Cores (no MOT w/o base check)	each	100.00
GPS Unit	day	100.00	Roadway Pavement Cores (day with MOT)	each	350.00
Portable Safety Signs	day	50.00	Roadway Pavement Cores (night with MOT)	each	400.00
Channelization Cones (each)	day	1.50	Surcharge for Night/Weekend Work	lump	35%
Soil Survey/Coring Crew (2 person)	hour	150.00	Surcharge for Mud Bug Rig	lump	25%
Soil Survey/Coring Crew (3 person)	hour	210.00	Surcharge for Track/Barge Rig	lump	50%
Chainsaw	day	55.00	Surcharge for OSHA-Certified Drill Crew	lump	10%
Temporary Piezometer	foot	30.00			

Truck Rig Unit Rates*								
		0 – 50	50 – 100	100 – 150	150 – 200	200 – 250	250 – 300	
SPT Borings	foot	\$16.00	\$20.00	\$30.00	\$40.00	\$48.00	\$58.00	
Rotary Wash Borings	foot	11.50	15.00	18.00	24.00	29.00	35.00	
CPT Soundings	foot	15.00	16.00	18.00	20.00	22.00	24.00	
Auger Borings	foot	11.50	---	---	---	---	---	
HW Rock Coring	foot	40.00	44.00	50.00	57.00	60.00	65.00	
Casing – 3 inch	foot	10.00	12.00	16.00	18.00	22.00	26.00	
Casing – 4 inch	foot	11.00	13.00	17.00	19.00	23.00	30.00	
Casing – 6 inch	foot	15.00	19.00	21.00	25.00	29.00	35.00	
Additional Split Spoon Samples	each	45.00	55.00	80.00	100.00	120.00	150.00	
Undisturbed Samples	each	180.00	200.00	260.00	320.00	380.00	450.00	
Borehole Grouting	foot	6.00	7.00	8.00	10.00	12.00	14.00	

*Multiply Truck Unit Rates by 1.25 for Mud Bug and 1.5 for Track/Barge/Amphibious Unit Rates

Laboratory Services					
Unit Weight	each	\$50.00	Unconfined Compression – Soil	each	\$225.00
Natural Moisture Content	each	15.00	Unconfined Compression – Rock	each	150.00
Grain Size Analysis	each	70.00	Splitting Tensile – Rock	each	175.00
Percent Fines	each	45.00	Permeability	each	300.00
Hydrometer Analysis	each	115.00	Permeability with Backpressure Saturation	each	400.00
Organic Content	each	50.00	Corrosion Series	each	200.00
Atterberg Limits (Plastic & Liquid Limits)	each	110.00	Bitumen Extraction	each	100.00
Specific Gravity	each	80.00	Aggregate Gradation	each	60.00
Limerock Bearing Ratio	each	350.00	UU Triaxial Shear Strength (Q)	each	500.00
Consolidation with Rebound (12 loads)	each	600.00	CU Triaxial Shear Strength (R)	each	550.00
Consolidation Additional Loads	each	65.00	CD Triaxial Shear Strength (S)	each	650.00
Consolidation Extended Loads	each	100.00	Pocket Penetrometer/Torvane Shear Strength	each	25.00



**Geotechnical
and
Environmental
Consultants, Inc.**

2018 Environmental Services Fee Schedule

Professional Services

Item	Unit	Cost	Item	Unit	Cost
Principal	hour	\$250.00	Student Intern	hour	\$50.00
Senior Professional	hour	160.00	Senior Engineering Technician	hour	80.00
Project Manager	hour	140.00	Engineering Technician	hour	60.00
Project Professional	hour	120.00	Draftsman	hour	80.00
Staff Professional	hour	100.00	GIS Specialist	hour	100.00
Intern Professional	hour	85.00	Secretary	hour	60.00

Drilling/Equipment Rates

Direct Push/Truck Drill Rig Mobilization	each	\$500.00	Well Completion (flush mount)	each	\$250.00
Mudbug Drill Rig Mobilization	each	700.00	Well Completion (aboveground)	each	350.00
Track Drill Rig Mobilization	each	4,000.00	Well Development	hour	80.00
Direct Push Rig	day	1,500.00	Standby Time (2 person)	hour	220.00
Direct Push Well Materials	foot	25.00	Equipment Decontamination	hour	80.00
Temporary Piezometer	foot	30.00	Steam Cleaner	day	150.00
Two-inch Monitoring Well - conventional rig (0-50 ft)	foot	35.00	Concrete Saw	day	75.00
Two-inch Monitoring Well - conventional rig (50-100 ft)	foot	45.00	Concrete Coring Machine	day	150.00
Expendable Sampling Equipment	day	50.00	Ground Penetrating Radar Survey	hour	350.00
Expendable Point	day	15.00	Surcharge for Night/Weekend Work		35%

Soil/Sediment/Surface Water/Groundwater Sampling Equipment

Hand Auger	day	\$10.00	Organic Vapor Analyzer	day	\$160.00
Core Sampler	day	10.00	Multi-Parameter Water Quality	day	125.00
Dredge, Sediment Sampler	day	30.00	Turbidity Meter	day	50.00
Decontamination Station (hand sampling)	day	20.00	Dissolved Oxygen Meter	day	50.00
Support Truck	day	150.00	Photoionization Detector	day	125.00
Support Boat	day	200.00	pH meter w/Calibration Kit	day	50.00
Peristaltic Pump	day	50.00	Poly Sample Tubing	foot	1.50
Submersible Pump w/Variable Speed Controller	day	200.00	Silicon Pump Tubing (Peristaltic)	foot	3.50
Centrifugal Pump	day	75.00	Flow-Through Filtration	each	30.00
100 ft Water Level Meter	day	40.00	Miscellaneous Supplies	day	50.00
100 ft Oil/Water Interface Probe	day	100.00			

Miscellaneous Field Equipment

Survey Equipment (Level and Rod)	day	\$50.00	GPS Unit	day	\$100.00
----------------------------------	-----	---------	----------	-----	----------

Laboratory Services

RCRA 8 Metals (Water)	each	\$125.00	RCRA 8 Metals (Soil)	each	\$125.00
Herbicide/Pesticide Group (Water)	each	450.00	Herbicide/Pesticide Group (Soil)	each	450.00
Gasoline/Kerosene Group (Water)	each	400.00	Gasoline/Kerosene Group (Soil)	each	350.00
Used Oil Group (Water)	each	815.00	Used Oil Group (Soil)	each	755.00

Steven L. Anderson, Jr., PSM, PLS
 Charles M. Arnett, PSM
 Michael D. Brown, PSM
 Eric E. Cain, PSM
 John K. Carr, PSM
 Michael L. Dougherty, PSM
 James M. Dunn, II, PSM
 Thomas F. Ferguson, PSM
 Ronnie A. Figueroa, PSM, GISP
 Tate B. Flowers, PSM, PLS
 Robert W. Gardner, PSM
 Brian R. Garvey, PE, GISP
 Daniel J. Henry, PSM, PLS
 Ryan E. Johnson, PSM
 Gary B. Krick, PSM
 Brad J. Lashley, PSM, PLS
 Myron F. Lucas, PSM
 James E. Mazurak, PSM



Southeastern Surveying and Mapping Corporation
Serving the Southeast Since 1972
www.southeasternsurveying.com
info@southeasternsurveying.com

Page 285 of 622
 Thomas P. Young, Jr., PSM, GISP
 Timothy O. Mosby, PSM
 James L. Petersen, PSM
 William C. Rowe, PSM
 Tony G. Syfrett, PSM, PLS
 Kirk R. Hall, EI, GISP
 Brad A. Stroppel, EI, GISP
 Cheryl A. Isenberg, GISP
 Brian E. Latchaw, GISP
 Patrick J. Phillips, GISP
 Donna L. Hendrix, CST IV
 Mark W. Klaers, CST IV
 Joseph S. Locklin, CST IV
 David M. Rentfrow, CST IV
 Steve D. Smith, CST IV
 Celeste B. van Gelder, CST IV

Land Surveying & Mapping Services • Sub-Surface Utility Designation & Location Services • Geographic Information Systems • GPS Asset Inventories

2018 Rates

Surveying & Mapping Services

Personnel Classification	Typical Work Tasks	Hourly Billing Rate
Professional Surveyor & Mapper/PSM	Project Management, Project Surveyor Quality Control/Quality Assurance Reviews	\$134.00 / per hour
Expert Witness	Attendance and Testimony at Trial	\$268.00 / per hour
Senior Technician	Project Calculations Preparation of Descriptions	\$100.00 / per hour
CAD Technician	Drafting of Projects, Preparation of Sketches for Descriptions	\$89.00 / per hour
<u>Survey Division</u>		
1 Man Field Crew	Completes field data collection and inventory.	\$100.00 / per hour
2 Man Field Crew	Performs reconnaissance activities for	\$134.00 / per hour
3 Man Field Crew	completion of survey related tasks.	\$169.00 / per hour
4 Man Field Crew		\$194.00 / per hour
Sketch of Description (per SD)		\$510.00

GIS Mapping Services

Personnel Classification	Typical Work Tasks	Hourly Billing Rate
Professional Engineer	Project Management	\$134.00 / per hour
GIS Analyst	Quality Control/Quality Assurance Project Reviews Database Design, Programming/ Quality Control/Quality Assurance	\$100.00 / per hour
GIS Technician	Data Entry, Data Editing	\$89.00 / per hour
2 Man GPS Crew	Field Asset Inventory (sub-meter)	\$134.00 / per hour
1 Man GPS	Field Asset Inventory (sub-meter)	\$100.00 / per hour

Plat Review Services (if required)

Initial Review includes Second Review

Plat (initial and second review)	\$794.00/per Plat (up to 2 sheets) \$23.00/per lot (over 2 sheets)
----------------------------------	---

Third or Additional Review Same Plat

Plat (third or additional reviews of same plat)	\$357.00
---	----------

6500 All American Blvd Orlando, FL 32810 407.292.8580 407.292.0141 Fax	1130 Highway 90 Chipley, FL 32428 850.638.0790 850.638.8069 Fax	Lakeside Executive Center 8641 Baypine Road Suite 5 Jacksonville, FL 32256 904.737.5990 904.737.5995 Fax	119 West Main Street Tavares, FL 32778 352.343.4880 352.343.4914 Fax	10 East Lake Street Kissimmee, FL 34744 407.944.4880 407.944.0424 Fax	University Corporate Park 10770 North 46th Street Suite C-300 Tampa, FL 33617 813.898.2711 813.898.2712 Fax	410 Honeysuckle Road Dothan, AL 36305 334.648.0288
---	--	---	---	--	--	--

Licenses: PSM: Florida Professional Surveyor & Mapper • PLS: Alabama Professional Land Surveyor • PE: Professional Engineer
 Certifications: EI: Engineering Intern • GISP: Geographic Information Systems Professional • CST: Certified Survey Technician

Subsurface Utility Engineering Services**Designating Services**

Project Manager	\$134.00 / per hour
Senior Technician	\$100.00 / per hour
2 man crew	\$217.00 / per hour
3 man crew	\$251.00 / per hour

Vacuum Excavation

Test Holes	
1 Test Hole/Dirt	\$477.00
1 Test Hole/Asphalt/Concrete	\$593.00
2 - 19 Test Holes/Dirt	\$408.00 / each
2 - 19 Test Holes/Asphalt/Concrete	\$466.00 / each
20 - 49 Test Holes/dirt	\$373.00 / each
20 - 49 Test Holes/asphalt/concrete	\$420.00 / each
50 - 99 Test Holes/dirt	\$322.00 / each
50 - 99 Test Holes/asphalt/concrete	\$373.00 / each
100 or more Test Holes/dirt	\$286.00 / each
100 or more Test Holes/asphalt/concrete	\$326.00 / each

GPR Bore Route

\$581.00 / each

Vacuum Excavation for Environmental Services

Vacuum Excavation for Monitoring Wells/Soil Samples when requirements dictate vacuum or hand digging down 8 feet to 10 feet prior to drilling. (3"-4" in diameter, 8' to 10' deep, concrete/asphalt removed if necessary)

1 - 9 Monitoring Wells/Soil Samples	\$292.00 / each
10 - 19 Monitoring Wells/Soil Samples	\$234.00 / each
20 - 49 Monitoring Wells/Soil Samples	\$176.00 / each

An hourly rate of \$333.00 will be used for all exploratory excavation projects.

Larger excavation projects which require specialized equipment (shoring, de-watering, etc.) will be quoted on a task by task basis.

Survey Services for Utility Projects

Project Manager/Professional Surveyor and Mapper	\$134.00 / per hour
Two Person Survey Field Team	\$134.00 / per hour
Three Person Survey Field Team	\$169.00 / per hour
Clerical	\$60.00 / per hour

Concrete Radar Mapping/Imaging

(concrete assessment/inspection, grid scans & debris assessment)

1 Man Crew	\$217.00 / per hour
------------	---------------------

Closed Circuit Televising (CCTV) Services (will be quoted on a task by task basis per requirements)**Maintenance of Traffic (MOT)**

If required MOT specialist will be contracted and cost for same will be passed on with a 10% mark-up for coordination of same

SSMC MOT Lane Closures	Per Lane Closure	\$612.00 / per day
	Per Lane Closure	\$816.00 / per night

Elevation Certificates

Residential Elevation Certificate	\$464.00
Commercial Elevation Certificate (per bldg.)	\$876.00



EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND RS&H, INC.
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 20th day of March, 2018 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **RS&H, INC.** whose address is 301 East Pine Street, Suite 350, Orlando, FL 32801, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2017- 010, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that RS&H, INC. is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER's services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:

- A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
- B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.

4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for

professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN ENGINEER'S employees as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 **INVOICE PROCESSING**

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 Public Works & Engineering Department
 City of Kissimmee
 101 N. Church Street
 Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 **PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION**

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.5 **ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT**

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER may be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 **WORK COMMENCEMENT**

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 **IMPLEMENTATION SCHEDULE**

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 **TIME FOR COMPLETION**

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 **GENERAL**

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;

6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to

the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:
 Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

RS&H, INC.
 301 East Pine Street, Suite 350
 Orlando, FL 32801

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0 herein.

8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the DESIGN ENGINEER requesting that the DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or

8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.

8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.

8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the work on such documents has been completed or is in progress.

8.6 SUSPENSION

8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the DESIGN ENGINEER's services hereunder, the CITY shall so notify the DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

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

If any claims are made against the CITY, including its agents and/or employees, or if the CITY is sued or held liable in any manner whatsoever, as a result of, or by reason of, any negligent actions or omissions, or negligent violations of any applicable law, rule or regulation taken by the DESIGN ENGINEER in connection with the rendering of services to the CITY under this Agreement, then and in that event the DESIGN ENGINEER will at all times indemnify and save the CITY and its agents and/or employees, harmless from and against any liability for damages, compensations, suits, judgments, loss, costs, charges and expenses of whatsoever kind of nature, including but not limited to counsel and engineer's fees, and court costs, which they shall or may at any time sustain or incur.

9.2 **INSURANCE**

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 **WORKERS' COMPENSATION**

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 **COMPREHENSIVE GENERAL LIABILITY**

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 **COMPREHENSIVE AUTOMOBILE LIABILITY**

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 **PROFESSIONAL LIABILITY INSURANCE**

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mr. Kerrith Fiddler
 Director of Public Works & Engineering
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated Representative identified in Section 6.2. The certificates shall clearly indicate that the

DESIGN ENGINEER has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

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

12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in

effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.
- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 Time is of the essence of this Agreement.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES

20.1 CLAIMS AND DISPUTES

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 **WAIVER OF JURY TRIAL; ATTORNEY'S FEES**

It is mutually agreed by and between City and Owner 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.

Signature page to follow

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

RS&H, INC.

By: Edward J. Gonzalez

EDWARD J. GONZALEZ

Title: VICE PRESIDENT

Date: 2/26/18

STATE OF FLORIDA)

COUNTY OF Orange)

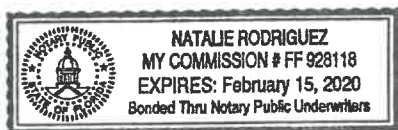
The foregoing instrument was acknowledged before me this 26th day of February, 2018, by Edward Gonzalez, as Vice President of RS&H, Inc., Inc. a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: Natalie Rodriguez

Print Name: Natalie Rodriguez

My Commission Expires: 2-15-20



CITY OF KISSIMMEE

Jose Alvarez, Mayor-Commissioner

Attest

Linda S. Hansell
Linda Hansell, City Clerk

Approved as to form and legality

Alpha Sanchez
City Attorney

EXHIBIT A**SCOPE OF SERVICES**

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:
DATE:	AMENDMENT:
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:	
DESCRIPTION OF ASSIGNMENT:	
FORM OF COMPLETED DELIVERABLES:	
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.	
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.	
Previous Contract Total Dollars:	\$
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	☐ +
NET CONTRACT TOTAL DOLLARS:	
\$	
Accepted By: _____ (signature)	Requested By: _____ (signature)
Title/Position: _____	Approved By: _____ (signature)
PW Director: _____ (signature)	City Commission Approval Date: _____
Approved as to Form and Legality: _____ (signature)	

EXHIBIT C
HOURLY RATE SCHEDULE

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

RS&H, Inc.
Weighted Wage Rate
City of Kissimmee - Continuing Engineering Services

Title / Classification	Emp. #	Employee	Current Hourly Rate	Percent Utilized	Weighted Rate	Escalator	Weighted Escalated Rate	Multiplier	Billing Rate
Project Manager	030951	Gonzalez, Edward	\$100.49	x 10% =	\$10.05				
	032563	Gonzalez, Renato	\$90.01	x 90% =	\$81.01				
				<u>100%</u>	<u>\$91.06</u>	x 1.0000 =	\$91.06	x 3.02 =	\$274.93
Senior Engineer	030618	Birst, Shawn	\$73.55	x 10% =	\$7.36				
	032549	Glenn, Jeffrey	\$80.57	x 40% =	\$32.23				
	031387	Jeffers, Nicole	\$56.74	x 10% =	\$5.67				
	033437	Markel, Paul	\$67.24	x 40% =	\$26.90				
				<u>100%</u>	<u>\$72.16</u>	x 1.0000 =	\$72.16	x 3.02 =	\$217.86
Engineer	031479	Desai, Abhijeet	\$46.96	x 20% =	\$9.39				
	032956	Gil, Francina	\$37.75	x 20% =	\$7.55				
	030540	Petersen, Shannon	\$43.15	x 20% =	\$8.63				
	030520	Scheid, Chelsea	\$50.97	x 10% =	\$5.10				
	030593	Schram, Amanda	\$38.57	x 10% =	\$3.86				
	031078	Williams, Zachary	\$43.57	x 20% =	\$8.71				
				<u>100%</u>	<u>\$43.24</u>	x 1.0000 =	\$43.24	x 3.02 =	\$130.55
Planner/Permitter	031752	Dailey, Christopher	\$55.95	x 50% =	\$27.98				
	032054	Hartz, Robyn	\$52.89	x 50% =	\$26.45				
				<u>100%</u>	<u>\$54.43</u>	x 1.0000 =	\$54.43	x 3.02 =	\$164.33
Senior Landscape Architect	036284	Sill, Ronald	\$76.71	x 100% =	\$76.71				
				<u>100%</u>	<u>\$76.71</u>	x 1.0000 =	\$76.71	x 3.02 =	\$231.60
Landscape Architect	030779	Bryan, David	\$43.12	x 100% =	\$43.12				
				<u>100%</u>	<u>\$43.12</u>	x 1.0000 =	\$43.12	x 3.02 =	\$130.19
Architect	030756	DeMeo, Michael	\$48.39	x 100% =	\$48.39				
				<u>100%</u>	<u>\$48.39</u>	x 1.0000 =	\$48.39	x 3.02 =	\$146.10
Engineering Technician	031393	Anzelone, Thomas	\$30.75	x 20% =	\$6.15				
	033655	Kinney, Ricky	\$33.82	x 20% =	\$6.76				
	030817	Mendoza, Olga	\$35.85	x 30% =	\$10.76				
	031374	Rhodes, Lauren	\$29.29	x 30% =	\$8.79				
				<u>100%</u>	<u>\$32.46</u>	x 1.0000 =	\$32.46	x 3.02 =	\$98.00
Clerical	030531	Flynn, Kimberly	\$28.14	x 100% =	\$28.14				
				<u>100%</u>	<u>\$28.14</u>	x 1.0000 =	\$28.14	x 3.02 =	\$84.96

Multiplier Calculation

Direct Labor	1.0000
Overhead	1.6944
Total Before Profit	2.6944
Operating Margin	1.1200
FCCM	0.00146
Total Multiplier	3.0192
Direct Expenses	9.78%
Escalating Factor Applied	1.0000

I certify that these rates are accurate as of February 27, 2018.

Sincerely,


Edward J. González, P.E.
Vice President

EXHIBIT C**RS&H, Inc
Calculation of Escalation****City of Kissimmee - Continuing Engineering Services**

The following table is used to determine the escalation percentage to be applied to the entire project. It is anticipated that future annual salary increases will be effective May 1st of each year (as have been prior increases) and the project will **start March 6, 2018**, with a 60 month schedule.

Period			Number of Months	Percent Increase	Escalation Calculation
3/16/2018	TO	4/30/2018	2	0.00%	0.00
5/1/2018	TO	4/30/2019	12	3.50%	1.035
5/1/2019	TO	4/30/2020	12	3.50%	1.071
5/1/2020	TO	4/30/2021	12	3.50%	1.109
5/1/2021	TO	4/30/2022	12	3.50%	1.148
5/1/2022	TO	3/5/2023	10	3.50%	1.188



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/23/2018

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 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 Harden and Associates 501 Riverside Avenue, Suite 1000 Jacksonville FL 32202	CONTACT NAME: Todd Peters PHONE (A/C, No, Ext): 904-354-3785 E-MAIL ADDRESS: tpeters@hardeninsight.com		FAX (A/C, No): 904-634-1302													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Charter Oak Fire Insurance Co</td> <td>25615</td> </tr> <tr> <td>INSURER B : Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER C : Travelers Property/Casualty Co</td> <td>25674</td> </tr> <tr> <td>INSURER D : Phoenix Insurance Company</td> <td>25623</td> </tr> <tr> <td>INSURER E : Lloyds of London</td> <td>85202</td> </tr> <tr> <td>INSURER F : Lloyds, London</td> <td></td> </tr> </tbody> </table>			INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Charter Oak Fire Insurance Co	25615	INSURER B : Travelers Indemnity Company	25658	INSURER C : Travelers Property/Casualty Co	25674	INSURER D : Phoenix Insurance Company	25623	INSURER E : Lloyds of London	85202	INSURER F : Lloyds, London
INSURER(S) AFFORDING COVERAGE	NAIC #															
INSURER A : Charter Oak Fire Insurance Co	25615															
INSURER B : Travelers Indemnity Company	25658															
INSURER C : Travelers Property/Casualty Co	25674															
INSURER D : Phoenix Insurance Company	25623															
INSURER E : Lloyds of London	85202															
INSURER F : Lloyds, London																
INSURED RS&H, Inc. 10748 Deerwood Park Blvd S Jacksonville FL 32256	REYNO-1															

COVERAGES

CERTIFICATE NUMBER: 189656850

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 SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC	Y	630-4711N755-COF-17	6/28/2017	6/28/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS		8104621M601-IND-17	6/28/2017	6/28/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp/Coll Deductible \$ 1,000/\$1,000
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000		CUP-3J758369-TIL-17	6/28/2017	6/28/2018	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C D	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	PJUB915K337417 PYYCNUB5388B30717	12/1/2017 12/1/2017	12/1/2018 12/1/2018	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
F E	Professional Liability with Contractors Pollution Liab. Claims Made; 1/1/42 Retro Date		DR1701772000 DR1701773000	6/28/2017 6/28/2017	6/28/2018 6/28/2018	Per Claim \$5,000,000 Aggregate \$5,000,000 Retention \$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Re: Project Continuing Professional Engineering Services – 2018

CERTIFICATE HOLDER

CANCELLATION

City of Kissimmee
 101 N. Church St.
 Attn: Mr. Kerrith Fiddler
 Director of Public Works
 & Engineering
 Kissimmee FL 34741

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

© 1988-2010 ACORD CORPORATION. All rights reserved.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

Duties Of An Additional Insured

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
 - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:
- "Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:
- a. After the signing and execution of the contract or agreement by you;
 - b. While that part of the contract or agreement is in effect; and
 - c. Before the end of the policy period.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ARCHITECTS, ENGINEERS AND SURVEYORS INDUSTRYEDGESM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. Broadened Named Insured B. Incidental Medical Malpractice C. Reasonable Force – Bodily Injury Or Property Damage D. Non-Owned Watercraft – Increased To Up To 75 feet E. Aircraft Chartered With Pilot F. Extension Of Coverage – Damage To Premises Rented To You G. Personal Injury – Assumed by Contract H. Increased Supplementary Payments I. Additional Insured – Owner, Manager Or Lessor Of Premises J. Additional Insured – Lessor Of Leased Equipment K. Additional Insured – State Or Political Subdivisions – Permits Relating To Premises L. Additional Insured – State Or Political Subdivisions – Permits Relating To Operations | <ul style="list-style-type: none"> M. Who Is An Insured – Newly Acquired Or Formed Organizations N. Injury To Co-Employees And Co-Volunteer Workers O. Medical Payments Limit P. Knowledge And Notice Of Occurrence Or Offense Q. Other Insurance Condition R. Unintentional Omission S. Waiver Of Transfer Of Rights Of Recovery Against Others To Us When Required By Contract T. Amended Bodily Injury Definition U. Amended Insured Contract Definition – Railroad Easement V. Additional Definition – Written Contract Requiring Insurance |
|---|---|

PROVISIONS

A. BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES

The Named Insured in Item 1. of the Declarations is amended as follows:

The person or organization named in Item 1. of the Declarations and any organization, other than a partnership, joint venture, limited liability company or trust, of which you are the sole owner or in which you maintain the majority ownership interest on the effective date of the policy. However,

coverage for any such additional organization will cease as of the date, if any, during the policy period, that you no longer are the sole owner of, or maintain the majority ownership interest in, such organization.

B. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission

COMMERCIAL GENERAL LIABILITY

- committed by any of your "employees" who is employed by you as a registered nurse, licensed practical nurse, emergency medical technician or paramedic, in providing or failing to provide "incidental medical services" or "Good Samaritan services" to a person.
2. The following is added to the **DEFINITIONS** Section:
 - a. "Incidental medical services" means medical, surgical, dental, laboratory, x-ray or nursing service, treatment, advice or instruction; the related furnishing of food or beverages; the furnishing or dispensing of drugs or medical supplies or appliances; or first aid.
 - b. "Good Samaritan services" means those medical services rendered or provided in an emergency and for which no remuneration is demanded or received.
 3. The following is added to **Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED**
 Paragraphs (1) (a), (b), (c) and (d) above do not apply to any of your "employees" who are employed by you as a registered nurse, licensed practical nurse, emergency medical technician or paramedic but only while performing the services described in Paragraph 1. above and while acting within the scope of their employment by you. Any such "employees" rendering "incidental medical services" or "Good Samaritan services" will be deemed to be acting within the scope of their employment by you.
 4. The following exclusion is added to Paragraph 2. Exclusions of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**
Sale of Pharmaceuticals
 "Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by or with the knowledge or consent of the insured.
 5. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**
 This insurance is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to you or any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" or "Good Samaritan services", except for insurance purchased specifically by you to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage Part.
 6. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**
 For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" in providing or failing to provide "incidental medical services" or "Good Samaritan services" to any one person will be deemed to be one "occurrence".
 - C. **REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION**
 The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**
 - a. **Expected Or Intended Injury Or Damage**
 "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.
 - D. **NON-OWNED WATERCRAFT – INCREASED TO UP TO 75 FEET**
 1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**
 - (2) A watercraft you do not own that is:
 - (a) Less than 75 feet long; and
 - (b) Not being used to carry any person or property for a charge.
 2. The following is added to **SECTION II – WHO IS AN INSURED:**
 Any person who, with your expressed or implied consent, either uses or is responsible for the use of a nonowned watercraft that is less than 75 feet and not being used to carry person or property for a charge is included as an insured under this Coverage Part.

COMMERCIAL GENERAL LIABILITY

E. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured; and
- (b) Not owned by any insured.

F. EXTENSION OF COVERAGE – DAMAGE TO PREMISES RENTED TO YOU

1. The following replaces the last paragraph of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions **c.** through **n.** do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water.

A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**

2. The insurance under this Provision **F.** does not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Rupture, bursting, or operation of pressure relief devices;
- b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or
- c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for the sum of all damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission

of the owner, caused by: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

The Damage To Premises Rented To You Limit will be the higher of:

- a. \$300,000; or
- b. The amount shown for the Damage To Premises Rented To You Limit in the Declarations for this Coverage Part.

4. The following replaces Paragraph **a.** of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water is not an "insured contract";

G. PERSONAL INJURY – ASSUMED BY CONTRACT

The following replaces Exclusion **e.**, **Contractual Liability** in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

"Advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

H. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

COMMERCIAL GENERAL LIABILITY

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B of SECTION I – COVERAGES:**

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

I. ADDITIONAL INSURED – OWNER, MANAGER OR LESSOR OF PREMISES

1. The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that you have agreed in a "written contract requiring insurance" to include as an additional insured on this Coverage Part is an insured, but:

- a. Only with respect to liability for "bodily injury" or "property damage" that occurs, or "personal injury" caused by an offense committed, after you have entered into that "written contract requiring insurance"; and
- b. Only if the "bodily injury", "property damage" or "personal injury" is caused, in whole or in part, by acts or omissions of you or any person or organization performing operations on your behalf, and arises out of the ownership, maintenance or use of that part of any premises leased to you under that "written contract requiring insurance".

2. The insurance provided to such additional insured under this Provision I. is subject to the following provisions:

- a. The limits of insurance afforded to such additional insured shall be the limits which you agreed to provide in the "written contract requiring insurance", or the limits shown in the Declarations for this Coverage Part, whichever are less; and
- b. The insurance afforded to such additional insured does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or "personal injury" caused by an offense committed, after you cease to be a tenant in that premises;
 - (2) Any structural alterations, new construction or demolition operations

performed by or on behalf of such additional insured; or

- (3) Any premises for which coverage is excluded by another endorsement to this Coverage Part.

3. This Provision I. does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.

J. ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

1. The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that you have agreed in a "written contract requiring insurance" to include as an additional insured on this Coverage Part is an insured, but:

- a. Only with respect to liability for "bodily injury" or "property damage" that occurs, or "personal injury" caused by an offense committed, after you have entered into that "written contract requiring insurance"; and
- b. Only if the "bodily injury", "property damage" or "personal injury" is caused, in whole or in part, by acts or omissions of you or any person or organization performing operations on your behalf, in the maintenance, operation or use of equipment leased to you by such additional insured.

2. The insurance provided to such additional insured under this Provision J. is subject to the following provisions:

- a. The limits of insurance afforded to such additional insured shall be the limits which you agreed to provide in the "written contract requiring insurance", or the limits shown in the Declarations for this Coverage Part, whichever are less; and
- b. The insurance afforded to such additional insured does not apply:
 - (1) To any "bodily injury" or "property damage" that occurs, or "personal injury" caused by an offense committed, after the equipment lease expires; or
 - (2) If the equipment is leased with an operator.

COMMERCIAL GENERAL LIABILITY

3. This Provision J. does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.

K. ADDITIONAL INSURED – STATE OR POLITICAL SUBDIVISIONS – PERMITS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit in connection with premises owned or occupied by, or rented or loaned to, you, is an insured, but only with respect to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations for which that state or political subdivision has issued such permit.

L. ADDITIONAL INSURED – STATE OR POLITICAL SUBDIVISIONS – PERMITS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit is an insured, but only with respect to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed by you or on your behalf for which that state or political subdivision has issued such permit. However, no such state or political subdivision is an insured for:

1. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
2. "Bodily injury" or "property damage" included within the "products – completed operations hazard".

M. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4.a. of **SECTION II – WHO IS AN INSURED**:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy pe-

riod, whichever is earlier. Any such newly acquired or formed organization that you report in writing to us within 180 days after you acquire or form the organization will be covered under this provision until the end of the policy period, even if there are more than 180 days remaining until the end of the policy period.

N. INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

The following is added to **SECTION II – WHO IS AN INSURED**:

1. Your "employees" are insureds with respect to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to your "volunteer workers" while performing duties related to the conduct of your business, provided that this coverage for your "employees" does not apply to acts outside the scope of their employment by you or while performing duties unrelated to the conduct of your business.
2. Your "volunteer workers" are insureds with respect to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business, or to your "employees" in the course of the "employee's" employment by you, provided that this coverage for your "volunteer workers" does not apply while performing duties unrelated to the conduct of your business.
3. Subparagraphs 2.a.(1)(a), (b) and (c) and 3.a. of **SECTION II – WHO IS AN INSURED** do not apply to "bodily injury" for which insurance is provided by paragraph 1. or 2. above.

O. MEDICAL PAYMENTS LIMIT

The following replaces paragraph 7. of **SECTION III – LIMITS OF INSURANCE**:

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- a. \$10,000; or
- b. The amount shown on the Declarations for Medical Expense Limit.

P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2. **Duties In The Event of Occurrence, Offense, Claim Or**

COMMERCIAL GENERAL LIABILITY

Suit of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

Notice of an "occurrence" or of an offense which may result in a claim must be given as soon as practicable after knowledge of the "occurrence" or offense has been reported to you, one of your "executive officers" (if you are a corporation), one of your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), one of your trustees who is an individual (if you are a trust), or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice.

Knowledge by any other "employee" of an "occurrence" or offense does not imply that you also have such knowledge.

Notice of an "occurrence" or of an offense which may result in a claim will be deemed to be given as soon as practicable to us if it is given in good faith as soon as practicable to your workers' compensation, accident, or health insurer. This applies only if you subsequently give notice of the "occurrence" or offense to us as soon as practicable after you, one of your "executive officers" (if you are a corporation), one of your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), one of your trustees who is an individual (if you are a trust), or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice discovers that the "occurrence" or offense may involve this policy.

Q. OTHER INSURANCE CONDITION

1. The following replaces Paragraph 4., **Other Insurance** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

4. Other Insurance

If valid and collectible "other insurance" is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the "other insurance" is also primary. Then, we will share with all that "other insur-

ance" by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the "other insurance", whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (3) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (4) If the loss arises out of the maintenance or use of aircraft, "autos", or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**; or
- (5) That is available to the insured when the insured is an additional insured under any other policy, including any umbrella or excess policy.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any provider of "other insurance" has a duty to defend the insured against that "suit". If no provider of "other insurance" defends, we will undertake to do so, but we will be entitled to the insured's rights against all those providers of "other insurance".

When this insurance is excess over "other insurance", we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such "other insurance" would pay for the loss in the absence of this insurance; and

COMMERCIAL GENERAL LIABILITY

- (2) The total of all deductible and self-insured amounts under that "other insurance".

We will share the remaining loss, if any, with any "other insurance" that is not described in this Excess Insurance provision.

c. **Method Of Sharing**

If all of the "other insurance" permits contribution by equal shares, we will follow this method also. Under this approach each provider of insurance contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the "other insurance" does not permit contribution by equal shares, we will contribute by limits. Under this method, the share of each provider of insurance is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all providers of insurance.

2. The following definition is added to **SECTION V – DEFINITIONS**:

"Other insurance":

- a. Means insurance, or the funding of losses, that is provided by, through or on behalf of:
- (1) Another insurance company;
 - (2) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit section of Paragraph 5. of **LIMITS OF INSURANCE** (Section III) or the Non cumulation of Personal and Advertising Injury limit sections of Paragraph 4. of **LIMITS OF INSURANCE** (Section III) applies;
 - (3) Any risk retention group;
 - (4) Any self-insurance method or program, other than any funded by you and over which this Coverage Part applies; or
 - (5) Any similar risk transfer or risk management method.
- b. Does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of

Insurance shown on the Declarations of this Coverage Part.

R. **UNINTENTIONAL OMISSION**

1. The following is added to Paragraph 6. **Representations of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy shall not prejudice your rights under this insurance.

2. This Provision R. does not affect our right to collect additional premium or to exercise our right of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

S. **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US WHEN REQUIRED BY CONTRACT**

The following is added to Paragraph 8. **Transfer of Rights of Recovery Against Others to Us of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of:

1. Premises owned by you, temporarily occupied by you with permission of the owner, or leased or rented to you;
2. Ongoing operations performed by you, or on your behalf, under a contract or agreement with that person or organization;
3. "Your work"; or
4. "Your products".

We waive these rights only where you have agreed to do so as part of a "written contract requiring insurance" entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense or "advertising injury" offense is committed.

T. **AMENDED BODILY INJURY DEFINITION**

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

"Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a per-

COMMERCIAL GENERAL LIABILITY

son, including death resulting from any of these at any time.

U. AMENDED INSURED CONTRACT DEFINITION – RAILROAD EASEMENT

1. Subparagraph c. of the definition of "insured contract" in the **DEFINITIONS** Section is replaced by the following:
 - c. Any easement or license agreement;
2. Subparagraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

V. ADDITIONAL DEFINITION – WRITTEN CONTRACT REQUIRING INSURANCE

The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or written agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

POLICY NUMBER: P-630-4711N755-COF-17

COMMERCIAL GENERAL LIABILITY
ISSUE DATE: 07-17-17**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY****DESIGNATED PROJECT(S)
GENERAL AGGREGATE LIMIT**This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART**SCHEDULE****Designated Project(s):**

EACH "PROJECT" FOR WHICH YOU HAVE AGREED, IN A WRITTEN CONTRACT WHICH IS IN EFFECT DURING THIS PERIOD TO PROVIDE A SEPARATE GENERAL AGGREGATE LIMIT, PROVIDED THAT THE CONTRACT IS SIGNED AND EXECUTED BY YOU BEFORE THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS.

**Designated Project
General Aggregate(s):**

GENERAL AGGREGATE
LIMIT SHOWN ON THE
DECLARATIONS.

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C. (SECTION I)**, which can be attributed only to operations at a single designated "project" shown in the Schedule above:
1. A separate Designated Project General Aggregate Limit applies to each designated "project", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations, unless separate Designated Project General Aggregate(s) are scheduled above.
 2. The Designated Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A.**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C.**, regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
- 3.** Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the Designated Project General Aggregate Limit for that designated "project". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project General Aggregate Limit for any other designated "project" shown in the Schedule above.
- 4.** The limits shown in the Declarations for **Each Occurrence, Damage To Premises Rented To You and Medical Expense** continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C. (SECTION I)**, which cannot be attributed only to operations at a single designated "project" shown in the Schedule above:

COMMERCIAL GENERAL LIABILITY

1. Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Project General Aggregate Limit.
- C. Part 2. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Damages under **Coverage B;** and
 - b. Damages from "occurrences" under **COVERAGE A (SECTION I)** and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)** which cannot be attributed only to operations at a single designated "project" shown in the **SCHEDULE** above.
- D. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Project General Aggregate Limit.
- E. For the purposes of this endorsement the **Definitions Section** is amended by the addition of the following definition:
- "Project" means an area away from premises owned by or rented to you at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad shall be considered a single "project".
- F. The provisions of **SECTION III – LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND T.Y. LIN INTERNATIONAL
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 20th day of March, 2018 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **T.Y. LIN INTERNATIONAL** whose address is 225 E. Robinson Street, Orlando, Florida 32801, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2017- 010, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that **T.Y. LIN INTERNATIONAL** is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER's services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

- 4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:
 - A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
 - B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.
- 4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for

professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN ENGINEER'S employees as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 INVOICE PROCESSING

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 Public Works & Engineering Department
 City of Kissimmee
 101 N. Church Street
 Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.5 **ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT**

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER may be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 **WORK COMMENCEMENT**

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 **IMPLEMENTATION SCHEDULE**

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 **TIME FOR COMPLETION**

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 **GENERAL**

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

- 6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;
- 6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to

the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 **DESIGNATED REPRESENTATIVES**

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:
 Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

T.Y. LIN INTERNATIONAL
 225 E. Robinson Street
 Orlando, Florida 32801

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0

herein.

8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the DESIGN ENGINEER requesting that the DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or

8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.

8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.

8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the

work on such documents has been completed or is in progress.

8.6 SUSPENSION

8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the DESIGN ENGINEER's services hereunder, the CITY shall so notify the DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

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

If any claims are made against the CITY, including its agents and/or employees, or if the CITY is sued or held liable in any manner whatsoever, as a result of, or by reason of, any negligent actions or omissions, or negligent violations of any applicable law, rule or regulation taken by the DESIGN ENGINEER in connection with the rendering of services to the CITY under this Agreement, then and in that event the DESIGN ENGINEER will at all times indemnify and save the CITY and its agents and/or employees, harmless from and against any liability for damages, compensations, suits, judgments, loss, costs, charges and expenses of whatever kind of nature, including but not limited to counsel and engineer's fees, and court costs, which they shall or may

at any time sustain or incur.

9.2 **INSURANCE**

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 **WORKERS' COMPENSATION**

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 **COMPREHENSIVE GENERAL LIABILITY**

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 **COMPREHENSIVE AUTOMOBILE LIABILITY**

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 **PROFESSIONAL LIABILITY INSURANCE**

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mr. Kerrith Fiddler
 Director of Public Works & Engineering
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated

Representative identified in Section 6.2. The certificates shall clearly indicate that the DESIGN ENGINEER has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

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

- 12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.
- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 Time is of the essence of this Agreement.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES**20.1 CLAIMS AND DISPUTES**

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 **WAIVER OF JURY TRIAL; ATTORNEY'S FEES**

It is mutually agreed by and between City and Owner 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.

Signature page to follow

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

T.Y. LIN INTERNATIONAL

By: [Signature]

Title: Vice President, P.E.

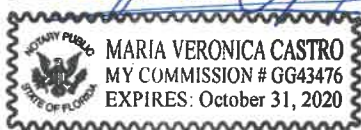
Date: 2/23/2018

STATE OF FLORIDA)
COUNTY OF Hillsborough)

The foregoing instrument was acknowledged before me this 23 day of February, 2018, by Atig Alvi, as Vice President of TYLIN International, Inc. a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: [Signature]



Print Name: Maria Veronica Castro
My Commission Expires: 10/31/2020

CITY OF KISSIMMEE

[Signature]
Jose Alvarez, Mayor-Commissioner

Attest:

[Signature]
Linda Hansell, City Clerk

Approved as to form and legality

[Signature]
City Attorney

EXHIBIT A**SCOPE OF SERVICES**

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

EXHIBIT B

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:		
DATE:	AMENDMENT:		
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:			
DESCRIPTION OF ASSIGNMENT:			
FORM OF COMPLETED DELIVERABLES:			
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.			
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.			
Previous Contract Total Dollars:	\$		
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	□ +		
NET CONTRACT TOTAL DOLLARS:			
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Accepted By: _____ (signature) Title/Position: _____ PW Director: _____ (signature) Approved as to Form and Legality: _____ (signature) </td> <td style="width: 50%; vertical-align: top;"> Requested By: _____ (signature) Approved By: _____ (signature) City Commission Approval Date: _____ </td> </tr> </table>		Accepted By: _____ (signature) Title/Position: _____ PW Director: _____ (signature) Approved as to Form and Legality: _____ (signature)	Requested By: _____ (signature) Approved By: _____ (signature) City Commission Approval Date: _____
Accepted By: _____ (signature) Title/Position: _____ PW Director: _____ (signature) Approved as to Form and Legality: _____ (signature)	Requested By: _____ (signature) Approved By: _____ (signature) City Commission Approval Date: _____		

EXHIBIT C
HOURLY RATE SCHEDULE

T.Y. Lin International
Hourly Rate Schedule

Category	Unit	Loaded Rate
Principal	Hourly	\$ 285.00
Project Manager	Hourly	\$ 190.00
Senior Engineer	Hourly	\$ 210.00
Senior Project Engineer	Hourly	\$ 185.00
Project Engineer	Hourly	\$ 140.00
Engineer	Hourly	\$ 120.00
Senior Designer	Hourly	\$ 140.00
Engineer Technical	Hourly	\$ 97.00
Clerical	Hourly	\$ 69.00

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/01/2018

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 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 Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	CONTACT NAME: Nancy Ferrick
	PHONE (A/C No, Ext): 510 465-3090 FAX (A/C No): 510 452-2193 E-MAIL ADDRESS: nferrick@dealeyrenton.com
INSURED T. Y. Lin International 345 California Street, Ste. 2300 San Francisco, CA 94104	INSURER(S) AFFORDING COVERAGE
	INSURER A: National Fire Insurance Co of H
	INSURER B: Continental Insurance Company
	INSURER C: Valley Forge Insurance Company
	INSURER D: Aspen American Insurance Co.
	INSURER E:
INSURER F:	

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ CONTRACTUAL LIAB. ☒ CROSS LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC ☐ OTHER	Y	Y	6056538518	03/01/2018	03/01/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	6045854867	03/01/2018	03/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	6056538549	03/01/2018	03/01/2019	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Y	6056808508 (CA)	03/01/2018	03/01/2019	☒ PER STATUTE ☐ OTH-ER
C	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	6056809061 (NON CA)	03/01/2018	03/01/2019	E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability			LRA9P0118	03/01/2018	03/01/2019	\$1,000,000 per Claim \$1,000,000 Annl Aggr.

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

RE: Continuing Engineering Services.

CERTIFICATE HOLDER

CANCELLATION

City of Kissimmee
Public Works & Engineering Department
101 N. Church Street, Suite 301
Kissimmee, FL 34741-0000

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



**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND BURGESS & NIPLE, INC.
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 20th day of March, 2018 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **BURGESS & NIPLE, INC.** whose address is 1800 Pembroke Drive, Suite 265, Orlando, Florida 32810, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2017- 010, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that **BURGESS & NIPLE, INC.** is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER's services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:

- A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
- B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "**B**". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.

C

4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN ENGINEER'S employees as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 **INVOICE PROCESSING**

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 Public Works & Engineering Department
 City of Kissimmee
 101 N. Church Street
 Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 **PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION**

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion,

payment shall be made in accordance with the provisions of Section 8.0.

4.5 ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER may be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 WORK COMMENCEMENT

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 IMPLEMENTATION SCHEDULE

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 TIME FOR COMPLETION

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 GENERAL

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;

6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of

CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:
Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

BURGESS & NIPLE, INC.
1800 Pembroke Drive, Suite 265
Orlando, Florida 32810

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0

herein.

8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the DESIGN ENGINEER requesting that the DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or

8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.

8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.

8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the

work on such documents has been completed or is in progress.

8.6 SUSPENSION

8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the DESIGN ENGINEER's services hereunder, the CITY shall so notify the DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

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

If any claims are made against the CITY, including its agents and/or employees, or if the CITY is sued or held liable in any manner whatsoever, as a result of, or by reason of, any negligent actions or omissions, or negligent violations of any applicable law, rule or regulation taken by the DESIGN ENGINEER in connection with the rendering of services to the CITY under this Agreement, then and in that event the DESIGN ENGINEER will at all times indemnify and save the CITY and its agents and/or employees, harmless from and against any liability for damages, compensations, suits, judgments, loss, costs, charges and expenses of whatsoever kind of nature, including but not limited to counsel and engineer's fees, and court costs, which they shall or may

at any time sustain or incur.

9.2 INSURANCE

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 WORKERS' COMPENSATION

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 COMPREHENSIVE GENERAL LIABILITY

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 COMPREHENSIVE AUTOMOBILE LIABILITY

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 PROFESSIONAL LIABILITY INSURANCE

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mr. Kerrith Fiddler
 Director of Public Works & Engineering
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated

Representative identified in Section 6.2. The certificates shall clearly indicate that the DESIGN ENGINEER has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

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

- 12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.
- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 Time is of the essence of this Agreement.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES**20.1 CLAIMS AND DISPUTES**

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 **WAIVER OF JURY TRIAL; ATTORNEY'S FEES** **DESIGN ENGINEER**

It is mutually agreed by and between City and ~~Owner~~ 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.

Signature page to follow

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

BURGESS & NIPLE, INC.

By: [Signature]

Title: VICE PRESIDENT

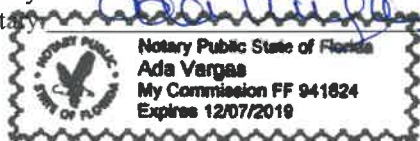
Date: FEBRUARY 23, 2018

STATE OF FLORIDA)
COUNTY OF orange)

The foregoing instrument was acknowledged before me this 23 day of February, 2018, by scot pentaker, as Vice President of Burgess & Niple, Inc. a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary



Print Name: Ada Vargas
My Commission Expires: 12/07/2019

CITY OF KISSIMMEE

[Signature]
Jose Alvarez, Mayor-Commissioner

Attest

[Signature]
Linda Hansell, City Clerk

Approved as to form and legality

[Signature]
City Attorney

EXHIBIT A**SCOPE OF SERVICES**

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

EXHIBIT B

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:		
DATE:	AMENDMENT:		
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:			
DESCRIPTION OF ASSIGNMENT:			
FORM OF COMPLETED DELIVERABLES:			
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.			
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.			
Previous Contract Total Dollars:	\$ _____		
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	☐ + _____		
NET CONTRACT TOTAL DOLLARS:			
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Accepted By: _____ (signature) Title/Position: _____ PW Director: _____ (signature) Approved as to Form and Legality: _____ (signature) </td> <td style="width: 50%; vertical-align: top;"> Requested By: _____ (signature) Approved By: _____ (signature) City Commission Approval Date: _____ </td> </tr> </table>		Accepted By: _____ (signature) Title/Position: _____ PW Director: _____ (signature) Approved as to Form and Legality: _____ (signature)	Requested By: _____ (signature) Approved By: _____ (signature) City Commission Approval Date: _____
Accepted By: _____ (signature) Title/Position: _____ PW Director: _____ (signature) Approved as to Form and Legality: _____ (signature)	Requested By: _____ (signature) Approved By: _____ (signature) City Commission Approval Date: _____		

EXHIBIT C
HOURLY RATE SCHEDULE

BURGESS & NIPLE**EXHIBIT C – HOURLY RATE SCHEDULE**

Below are anticipated staff classifications and loaded hourly rates for use on this contract.

B&N Staff Classification	Hourly Billing Rate
Principal	\$288.00
Chief Engineer	\$267.00
Project Manager	\$253.00
Senior Engineer	\$241.00
Project Engineer	\$208.00
Staff Engineer	\$138.00
Engineering Intern	\$110.00
Structural Inspector	\$151.00
Administrative/Secretary	\$110.00

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

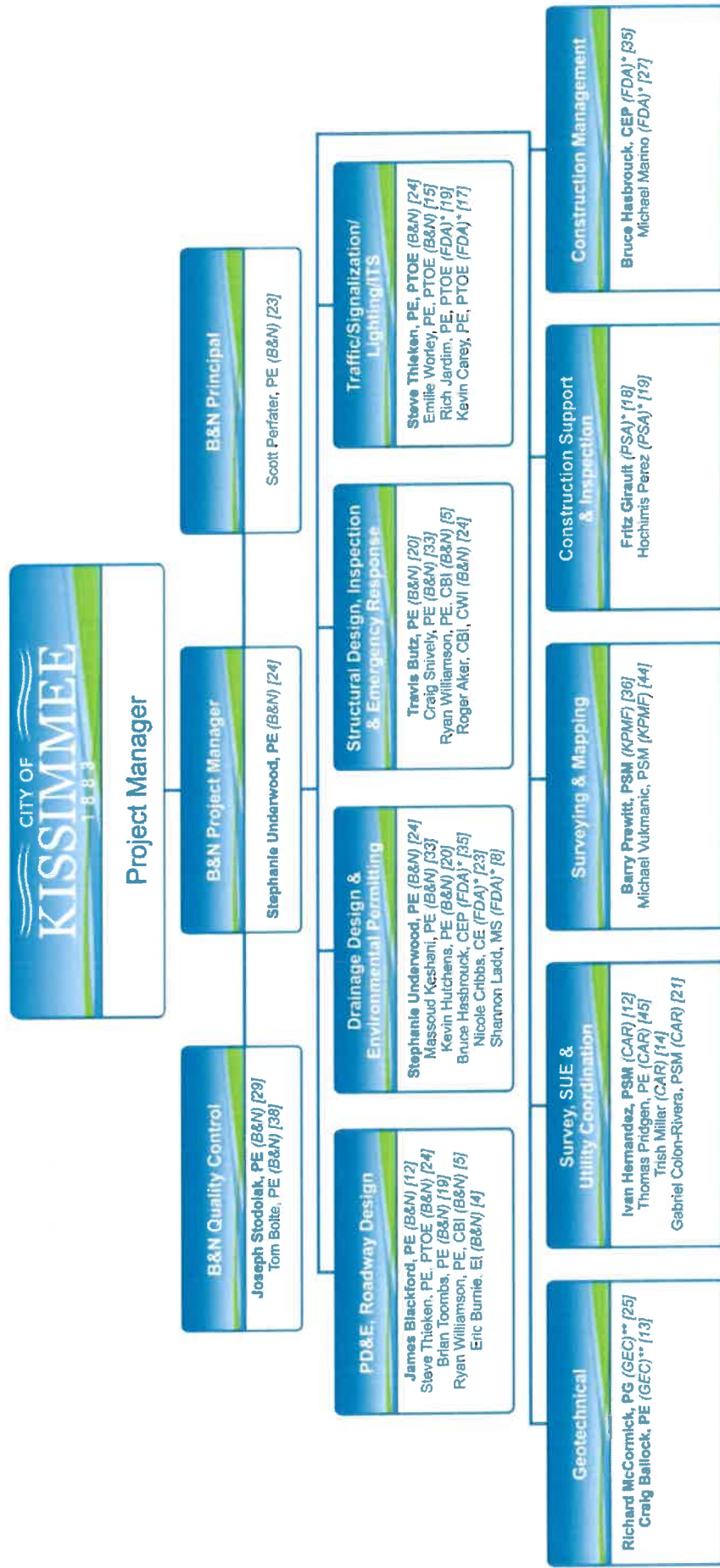
EXHIBIT E
ORGANIZATION CHART

8.0

BURGESS & NIPLÉ

EXHIBIT E – ORGANIZATION CHART

Below is the anticipated organization chart with key employees anticipated to be used on this contract.



Burgess & Niple (B&N) | Cardno (CAR) | Fallor, Davis & Associates (FDA)*
Geotechnical & Engineering Consultants (GEC)** | KPM Franklin (KPMF) | PSA Constructors (PSA)*
* = W/MBE Firm | ** = SBE Firm

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND ASKEY HUGHEY, INC.
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 20th day of March, 2018 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **ASKEY HUGHEY, INC.** whose address is 25 E. 13th Street, Suite 9, St. Cloud, Florida 34769, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2017- 010, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that ASKEY HUGHEY, INC. is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER's services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:

- A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
- B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.

4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for

professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN ENGINEER'S employees as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 **INVOICE PROCESSING**

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 Public Works & Engineering Department
 City of Kissimmee
 101 N. Church Street
 Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 **PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION**

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.5 **ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT**

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER may be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 **WORK COMMENCEMENT**

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 **IMPLEMENTATION SCHEDULE**

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 **TIME FOR COMPLETION**

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 **GENERAL**

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;

6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to

the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:
 Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering/City Engineer
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

ASKEY HUGHEY, INC.
 25 E. 13th Street, Suite 9
 St. Cloud, FL 34769

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0 herein.

8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the DESIGN ENGINEER requesting that the DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or

8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.

8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.

8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the work on such documents has been completed or is in progress.

8.6 SUSPENSION

8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the DESIGN ENGINEER's services hereunder, the CITY shall so notify the DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

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

If any claims are made against the CITY, including its agents and/or employees, or if the CITY is sued or held liable in any manner whatsoever, as a result of, or by reason of, any negligent actions or omissions, or negligent violations of any applicable law, rule or regulation taken by the DESIGN ENGINEER in connection with the rendering of services to the CITY under this Agreement, then and in that event the DESIGN ENGINEER will at all times indemnify and save the CITY and its agents and/or employees, harmless from and against any liability for damages, compensations, suits, judgments, loss, costs, charges and expenses of whatsoever kind of nature, including but not limited to counsel and engineer's fees, and court costs, which they shall or may at any time sustain or incur.

9.2 **INSURANCE**

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 **WORKERS' COMPENSATION**

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 **COMPREHENSIVE GENERAL LIABILITY**

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 **COMPREHENSIVE AUTOMOBILE LIABILITY**

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 **PROFESSIONAL LIABILITY INSURANCE**

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mr. Kerrith Fiddler
 Director of Public Works & Engineering
 City of Kissimmee
 Department of Public Works & Engineering
 101 N. Church Street
 Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated Representative identified in Section 6.2. The certificates shall clearly indicate that the

DESIGN ENGINEER has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

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

12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in

effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.
- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 Time is of the essence of this Agreement.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES

20.1 CLAIMS AND DISPUTES

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 WAIVER OF JURY TRIAL; ATTORNEY'S FEES

It is mutually agreed by and between City and Owner 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.

Signature page to follow

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

ASKEY HUGHEY, INC.

By: JAMES ASKEY

Title: PRESIDENT

Date: 2-21-18

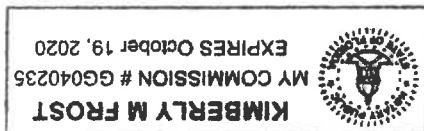
STATE OF FLORIDA)
COUNTY OF OSCEOLA)

The foregoing instrument was acknowledged before me this 21 day of February, 2018, by James Askey, as President of ASKEY HUGHEY, Inc. a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: Kimberly M. Frost

Print Name: Kimberly M. Frost
My Commission Expires: OCT 19, 2020



CITY OF KISSIMMEE

Jose Alvarez, Mayor-Commissioner

Attest

Linda Hansell
Linda Hansell, City Clerk

Approved as to form and legality

[Signature]
City Attorney

EXHIBIT A**SCOPE OF SERVICES**

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

EXHIBIT B

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:
DATE:	AMENDMENT:
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:	
DESCRIPTION OF ASSIGNMENT: 	
FORM OF COMPLETED DELIVERABLES: 	
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.	
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.	
Previous Contract Total Dollars:	\$ _____
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	____ + _____
NET CONTRACT TOTAL DOLLARS:	\$ _____
Accepted By: _____ (signature)	
Title/Position: _____	Requested By: _____ (signature)
PW Director: _____ (signature)	Approved By: _____ (signature)
Approved as to Form and Legality: _____ (signature)	City Commission Approval Date: _____

EXHIBIT "C"*Revised 1/1/2018***2018 HOURLY RATE SCHEDULE**

<u>Category</u>	<u>Hourly Rate</u>
Expert Witness and Testimony	Negotiable
Principal Preparation for Deposition/Trial	250.00
Principal	190.00
Project Manager	150.00
Project Engineer	120.00
Community Planner	100.00
Senior CADD Designer	90.00
CADD Technician	70.00
Executive Assistant	60.00
Word Processor	50.00
Office Assistant	35.00
Reimbursable Expenses	At Cost (Below)

Reimbursable expenses are charged to Client on a direct cost basis. Reimbursable expenses include all printing and reproduction costs associated with reports, prints, postage and shipping; laboratory analysis; expenses for travel outside a sixty (60) mile radius of the City of Kissimmee area to include food, transportation, lodging, and tolls at direct cost, mileage to be charged at 55.0 cents per mile, permit and application filing fees, and subconsultant fees.

In cases where overtime work is performed by hourly paid employees, it shall be billed at a rate of one and one-half (1½) times the standard hourly rates.

Hourly rates in effect through December 31, 2018. Rates shall be revised annually, effective January 1st.

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

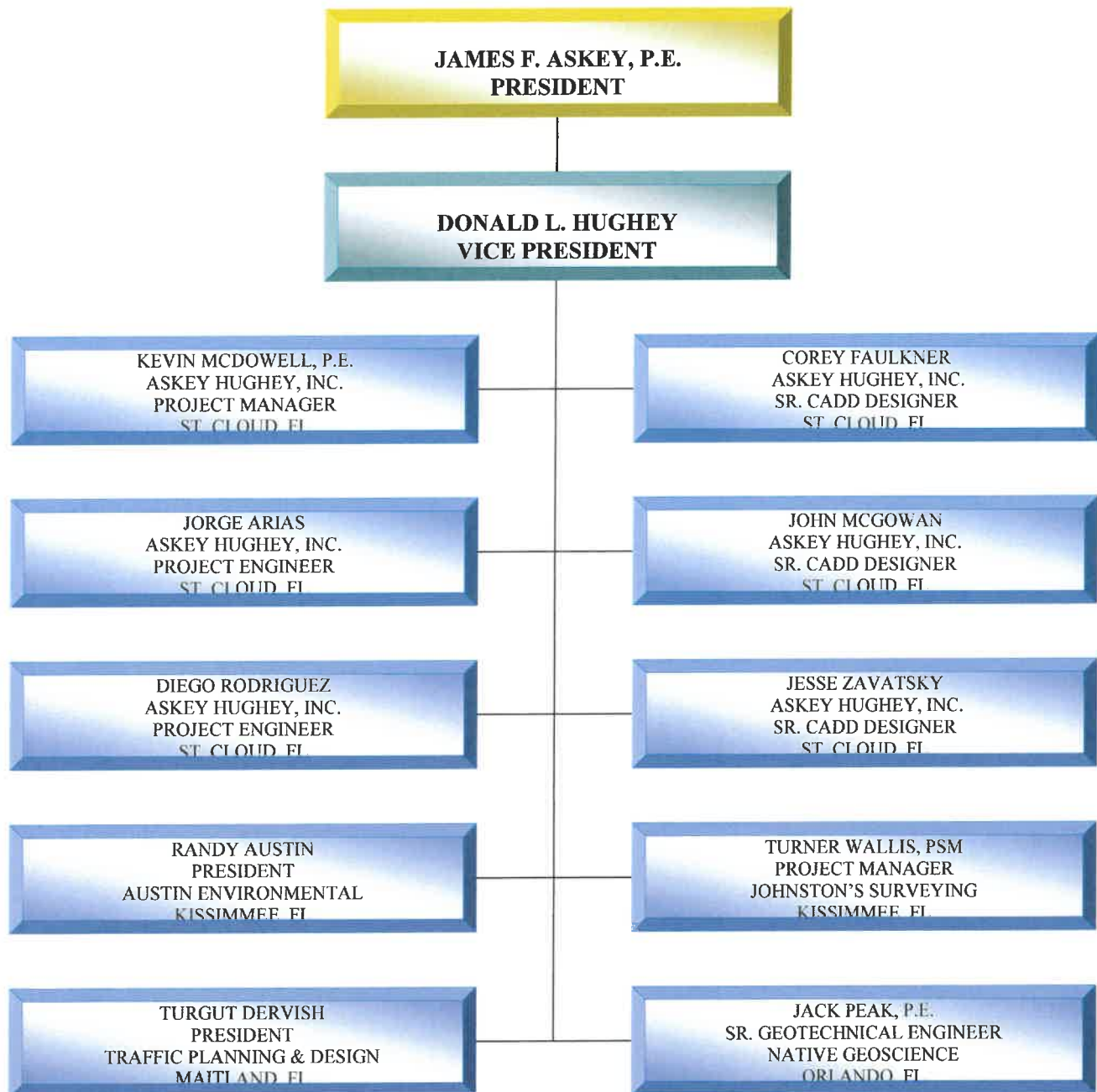
Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

EXHIBIT E

PROJECT STAFFING CHART



ITEM 7.P**AMENDMENT NO.1 TO THE AGREEMENT WITH YSI INCORPORATED FOR STORMWATER MONITORING, MAINTENANCE, AND DATA COLLECTION SERVICES****Request**

Approval to amend and increase the current contract price of \$241,797.00 by \$33,908.34 to provide additional stormwater monitoring, maintenance, and data collection services.

Explanation

On January 05, 2021, the City Commission approved a one-year contract extension with YSI Incorporated including an amended not to exceed cost in the amount of \$241,797 for the City's stormwater monitoring, maintenance, and data collection services.

This amendment No. 1 is for additional unforeseen costs associated with vandalism repairs and non-routine services needed. The current task of maintenance, website and data management, and hydrological services are for all seventeen (17) stormwater monitoring stations throughout the City of Kissimmee.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
40945203 503434		Decrease	275,818	33,909

Financial Summary:

Adequate funds are available in the Stormwater Utility Fund to cover the cost of these additional services.

Recommendation

Staff recommends Commission approval to amend and increase the current contract price of \$241,797.00 by \$33,908.34 to provide additional stormwater monitoring, maintenance, and data collection services.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

City of Kissimmee

Attachment(s):

1. YSI Task Work Order_Signed
2. YSI Supplement Service Cost Proposal Summary



CITY OF KISSIMMEE PUBLIC WORKS & ENGINEERING WORK ORDER FORM

Amendment #: 1

Purchase Order#: 21-000797

12/3/2021

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to Xylem/YSI with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

Provide additional services due to vandalism and non-routine services for maintenance, website and data management, and hydrological services of all the seventeen (17) stormwater monitoring stations.

FORM OF COMPLETED DELIVERABLES:

Weekly report of services completed and the continuation of functional monitoring stations.

BASIS OF PAYMENT: Services shall be made on the basis of **Billable hour's** method in accordance with the Scope of Services, the total not to exceed **\$275,705.34** without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within **60** calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Project Management and Administrative Services	\$1,224.00
2) Provide maintenance and technical support for all 17 monitoring station equipment	\$32,684.34
3)	
4)	
5)	
	\$33,908.34
Contract Dollars:	\$241,797.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$33,908.34
CONTRACT TOTAL DOLLARS:	\$275,705.34

Accepted By:

Matt Previte

(Signature)

Title/Position:

YSI/ISS Business Development Manager

City Engineer:

Ashley L. Willis

Digitally signed by Ashley L. Willis
DN: cn=Ashley L. Willis, o=Public Works & Engineering, ou=Engineering,
email=awillis@kissimmee.org, c=US
Date: 2021.12.10 16:31:29 -05'00'

City Engineer

(Signature)

Approved By:

Director, PW&E

(Signature)

Requested By:

(Signature)

Approved By:

City Manager

(Signature)

Approved By:

Mayor

(Signature)

City Commission Approval Date:

(If Required)

Approved as to Form and Legality:

City Attorney

(Signature)

Public Works and Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165



Quote Number: B201531
Quote Created: 2021 Dec 07
Quote Expiration Date: 2021 Dec 24

Quote Prepared For:

Nagel Altrui
City of Kissimmee
101 Church Street
Kissimmee, FL34741
(407) 847-2821
nagel.altrui@kissimmee.gov

Prepared by: Matt Previte
Cell Phone: +1 8633702604
Office Phone:
Email: matt.previte@xylem.com

NOTICE:

The following pricing is proprietary and confidential information. Neither this document nor its contents may be revealed or disclosed to unauthorized persons or sent outside the institution without prior permission from Xylem Inc.



Proposal Summary

#	Part Number	Description	List Price USD	Qty	Ext. Price USD
1	PM_Admin SERVICE	PROJECT MANAGEMENT and Administrative Services	\$1,224.00	1	\$1,224.00
2	Field_Tech SERVICE	Services to provide maintenance and technical support for equipment at all 17 monitoring stations	\$32,684.34	1	\$32,684.34
				Subtotal	\$33,908.34

Grand Total (in USD)	\$33,908.34
-----------------------	-------------

Terms Prepay
FOB Origin

This order is subject to the Standard Terms and Conditions of Sale - Xylem Americas effective on the date the order is accepted which terms are available at <http://www.xylem.com/en-US/support/xylem-americas-standard-terms-and-conditions/> and incorporated herin by reference and made a part of the agreement between parties.

YSI Inc., Payment Remittance Instructions for Integrated Systems and Services

Credit Card and Purchase Orders (reference or include quote B201531)

for Integrated Systems & Services

by Phone: (937) 767-7241 (Option 3)
by EMail: YSI.orders@xyleminc.com
by Fax: (937) 767-1058
by Mail: YSI Incorporated
Attn: Order Entry
1725 Brannum Lane
Yellow Springs, OH 45387

- Please make PO out to YSI Incorporated at the address above (Xylem is the parent company and we do business as YSI Incorporated).
- All purchase orders should be accompanied with a copy of this quote or clearly reference the quotation number.
- All purchase orders should have a complete billing and complete shipping address on the purchase order.
- For order acknowledgement please provide email address to send updates on order.
EMail_Address _____
- Taxes and tariffs are additional and are not included in the above pricing unless explicitly stated as a line item.
- Shipping charges are additional and are not included in the above pricing unless explicitly stated as a line item.
- Tax Exempt customers must include their Tax ID on their purchase order. Proof of Tax Exemption status may be required.
- Please notify orders@ysi.com if you plan to pay with a check without a PO or Credit Card.

Payment Remit Address for quote B201531

YSI Incorporated
Tax ID: 31-0526418
DUNS# 00-424-6716

by Check (Drawn on US Banks Only)
YSI Inc
26717 Network Place
Chicago, IL 60673-1267
Account Numb: 20000011127562
Account Name: YSI Inc.
by ACH (with Addenda Record), Wire or SWIFT
JPMorgan Chase Bank, N.A.
1 Chase Manhattan
New York, NY 10005
Account Numb: 20000011127562
Wire Routing #: 021000021
ACH Routing #: 028000024
SWIFT BIC: CHASUS33

NOTE: Customer is responsible for all wire, banking and credit card processing fees. In order to avoid delays in payment processing, please ensure that the remittance advice includes the following:

- Invoice number
- Invoice date
- Invoice amount

Warranty

General

YSI Integrated Systems, including standard sensor and accessories, are warranted for one year from date of purchase by the end user against defects in materials and workmanship. All Cables are warranted for one year from date of purchase by the end user against defects in material and workmanship. The warranty period for chemicals and reagents is determined by the expiration date printed on their labels. Within the warranty period, YSI will repair or replace, at its sole discretion, free of charge, any product that YSI determines to be covered by this warranty. Third party sensors and items not manufactured by YSI are not covered under this warranty. The original manufacturer's warranty may apply to the end customer, warranty claims should be directed to original manufacturer.

To exercise this warranty, write or call your local YSI representative, or contact YSI Customer Service in St. Petersburg, Florida, USA (information at the bottom of this page). Send the product and proof of purchase, transportation pre-paid, to your local YSI representative or the Factory Service Center selected by YSI. Repair or replacement will be made and the product returned transportation pre-paid. Repaired or replaced products are warranted for the balance of the original warranty period or at least 90 days from date of repair or replacement.

Limitation of Warranty

This warranty does not apply to any YSI product damage or failure caused by:

- (i) failure to install, operate or use the product in accordance with YSI's written instructions,
- (ii) abuse or misuse of the product,
- (iii) failure to maintain the product in accordance with YSI's written instructions or standard industry procedure,
- (iv) any improper repairs to the product,
- (v) use by you of defective or improper components or parts in servicing or repairing the product, or
- (vi) modification of the product in an way not expressly authorized by YSI.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YSI's LIABILITY UNDER THIS WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT, AND THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE PRODUCT COVERED BY THIS WARRANTY. IN NO EVENT SHALL YSI BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY DEFECTIVE PRODUCT COVERED BY THIS WARRANTY.

YSI Factory Service Centers

United States

YSI Integrated Systems & Services

1725 Brannum Lane

Yellow Springs, OH 45387

Phone: 937-767-7241

E-Mail: systems@ysi.com

ITEM 7.Q

PROFESSIONAL SURVEYING CONTINUING SERVICES CONTRACT EXTENSION WITH JOHNSTON'S SURVEYING, INC.

Request

Approval to extend the Professional Surveying Continuing Services Contract with Johnston's Surveying, Inc. for one-year.

Explanation

On June 19, 2018, the City Commission approved the selection of Johnston's Surveying, Inc. for the Professional Surveying Continuing Services Contract to provide surveying services on a task basis. This contract was for two (2) years with the option of three (3) one-year extensions. Staff would like to request approval to extend this contract for another year. The new expiration date will be June 20, 2022.

Recommendation

Staff recommends City Commission approval to extend the Professional Surveying Continuing Service Contract with Johnston's Surveying, Inc. for an additional year.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. Johnston's Surveying Inc Continuing Services Contract Extension-2021
2. Fully Executed Johnston's Surveying (6-19-2018)

CITY OF
KISSIMMEE
 1 8 8 3

June 21, 2021

Leslie Minshew
 Johnston's Surveying Inc.
 900 Cross Prairie Parkway
 Kissimmee, Florida 34744

Re: Continuing Survey Services Contract Extension

Dear Ms. Minshew:

On June 19, 2018 the City of Kissimmee Commissioners approved the Agreement between The City of Kissimmee and Johnston's Surveying Inc. for Continuing Surveying Services. Should you wish to continue this Agreement from "June 18, 2021 through June 18, 2022" with the City please sign below in blue ink and email a scanned color copy of the agreement back to us. A current Certificate of Liability should also be sent to us for our records as soon as possible.

If you have any questions please call us at 407-518-2169.

Sincerely,

Ashley J. Willis

Ashley Willis, P.E.
 City Engineer
 Public Works & Engineering

W. J. Wallis IV

Signed

President

Title

7-7-2021

Date

Mayor

Title

Date



Public Works & Engineering



900 Cross Prairie Pkwy • Kissimmee, FL 34744
 Phone: (407) 847-2179
 Fax: (407) 847-6140

**CITY OF KISSIMMEE
 CONTINUING SURVEYING SERVICES
 CONTRACT #RFQ 2018-001**

**2021 HOURLY RATE SCHEDULE
 “EXHIBIT C”**

<u>Staff Classification</u>	<u>Hourly Billing Rate</u>
Principal Surveyor (PSM)	\$180 per hour
CADD Surveyor (PSM).....	\$150 per hour
CADD Surveyor	\$130 per hour
Field Crew (3-man).....	\$200 per hour
Field Crew (2-man).....	\$160 per hour
Field Crew (1-Man w/truck).....	\$130 per hour
Field Crew (1-man – GPS)	\$110 per hour
Secretarial Services	\$ 60 per hour

AGREEMENT BETWEEN
THE CITY OF KISSIMMEE, FLORIDA
AND
JOHNSTON'S SURVEYING, INC.
FOR
CONTINUING SURVEYING SERVICES

- 1.0 GENERAL**
- 2.0 SCOPE OF SERVICES**
 - 2.1 GENERAL
 - 2.2 SPECIAL ENGINEERING SERVICES
 - 2.3 ADDENDUM
- 3.0 CITY'S RIGHT AND RESPONSIBILITIES**
- 4.0 COMPENSATION**
 - 4.1 GENERAL
 - 4.2 LUMP SUM METHOD
 - 4.3 COST-PLUS-FIXED FEE METHOD
 - 4.4 DIRECT LABOR COSTS METHOD
 - 4.5 REIMBURSABLE COSTS
 - 4.6 INVOICE PROCESSING
 - 4.7 PAYMENT IN THE EVENT OF CONTRACT TERMINATION OR SUSPENSION
 - 4.8 ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT
- 5.0 WORK COMMENCEMENT/IMPLEMENTATION SCHEDULE/TIME FOR COMPLETION**
 - 5.1 WORK COMMENCEMENT
 - 5.2 IMPLEMENTATION SCHEDULE
 - 5.3 TIME FOR COMPLETION
- 6.0 CITY'S DESIGNATED REPRESENTATIVE**
 - 6.1 GENERAL
 - 6.2 DESIGNATED REPRESENTATIVES
- 7.0 CHANGES IN SCOPE**
- 8.0 TERMINATION/SUSPENSION OF AGREEMENT**
 - 8.1 TERMINATION BY CITY FOR CAUSE
 - 8.2 TERMINATION BY SURVEYOR FOR CAUSE
 - 8.3 TERMINATION BY CITY WITHOUT CAUSE
 - 8.4 PAYMENT IN THE EVENT OF TERMINATION
 - 8.5 ACTION FOLLOWING TERMINATION
 - 8.6 SUSPENSION
- 9.0 INDEMNITY AND INSURANCE**
 - 9.1 GENERAL
 - 9.2 INSURANCE
- 10.0 NEGOTIATION DATA**
- 11.0 OWNERSHIP OF DOCUMENTS**
- 12.0 STANDARDS OF CONDUCT**
- 13.0 ACCESS TO RECORDS/AUDIT**

14.0 CODES AND DESIGN STANDARDS

15.0 ASSIGNABILITY

16.0 CONTROLLING LAWS

17.0 FORCE MAJEURE

18.0 TIME IS OF THE ESSENCE

19.0 EXTENT OF AGREEMENT

20.0 DISPUTES, REMEDIES, AND ATTORNEY FEES

SIGNATURE EXECUTION PAGE

EXHIBITS

"A" SCOPE OF SERVICES

"B" ADDENDUM FORM

"C" HOURLY RATES (by vendor)

"D" TRAVEL AND SUBSISTENCE POLICY

"E" PROJECT STAFFING CHART AGREEMENT FOR PROFESSIONAL SERVICES (by vendor)

THIS Agreement made and entered into the 19th day of June, 20 18
by and between the:

CITY OF KISSIMMEE, FLORIDA
101 N. Church Street
Kissimmee, Florida 34741

Hereinafter referred to as the "**CITY**" and:

JOHNSTON'S SURVEYING, INC.

Hereinafter referred to as the "**SURVEYOR**".

PREMISES

WHEREAS, the CITY desires to retain professional services to the performance of such services hereinafter referred to as "Assignment"; and;

WHEREAS, the CITY has provided notice of the desired professional services and carried out the proper selection process pursuant to and in accordance with the Consultants Competitive Negotiation Act, Chapter 75-281; and;

WHEREAS, the CITY desires to employ the SURVEYOR for the performance of Right Of Way Acquisition and other services upon the terms and conditions hereinafter set forth, and the SURVEYOR is desirous of performing such services upon said terms and conditions; and;

WHEREAS, the Assignment should include the following as required by the CITY:

WHEREAS, the CITY represents that it is a political subdivision of the State of Florida with the authority to engage the SURVEYOR and to accept the obligation for payment for the services desired; and;

WHEREAS, the CITY and the SURVEYOR each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1.0 GENERAL

- 1.1 SURVEYOR shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the SURVEYOR, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the SURVEYOR has submitted to the CITY detailed resumes of key personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the SURVEYOR desires to change the key personnel in an active assignment, it shall submit the qualifications of the new personnel to the CITY for prior approval. Key personnel shall include principals-in-charge project managers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The SURVEYOR acknowledges that the CITY has retained other consultants and that coordination between said consultants and the SURVEYOR may be necessary from time to time for the successful completion of the Assignments. The SURVEYOR agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".
- 1.4 The SURVEYOR will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the SURVEYOR shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional services related to the CITY. The CITY and SURVEYOR mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the SURVEYOR during this Assignment.

SECTION 2.0 SCOPE OF SERVICES

The SURVEYOR shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the SURVEYOR shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The SURVEYOR agrees to perform those services described in "EXHIBIT A - SCOPE OF SERVICES" which is attached hereto and made a part hereof. Services to be provided by the SURVEYOR shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the SURVEYOR describing the services desired and providing a basis for compensation to the SURVEYOR.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the SURVEYOR agree that there may be certain additional services required to be performed by the SURVEYOR during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the SURVEYOR, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3.0 CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the SURVEYOR:

- 3.1 Furnish the SURVEYOR with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the SURVEYOR for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remains the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the SURVEYOR.
- 3.2 Make CITY personnel available where required and necessary to assist the SURVEYOR. The availability and necessity of said personnel to assist the SURVEYOR shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the SURVEYOR to enter upon public lands and assist the SURVEYOR in gaining access to private lands as required for the SURVEYOR within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.

- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the SURVEYOR and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the SURVEYOR.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the SURVEYOR whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the SURVEYOR's services, or become aware of any issue or changes necessary to the work of the SURVEYOR.
- 3.7 Following the SURVEYOR's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the Assignment.

SECTION 4.0 COMPENSATION

4.1 GENERAL

Compensation to the SURVEYOR for services performed on each Addendum shall be in accordance with one of the following methods of compensation, as defined and indicated herein:

- a. Lump Sum Method
- b. Cost-Plus-Fixed Fee Method
- c. Direct Labor Costs Method

The type and amount of compensation for each Addendum to be provided shall be described on the Addendum form included in "EXHIBIT B - ADDENDUM FORM".

4.2 LUMP SUM METHOD

4.2.1 Lump sum compensation shall be the total fixed price amount payable under the Lump Sum Method (including all payroll costs, overhead costs, other direct costs, fees, subconsultants' and specialist costs) for the services to be provided in the Addendum unless there is a change in the scope of the work, or other conditions stipulated in the Addendum, and the Addendum is modified by both the CITY and SURVEYOR to reflect the change by formal amendment to this Agreement.

4.2.2 Payment to the SURVEYOR for services performed under an Addendum under the Lump Sum Method shall be monthly in proportion to the percentage of work completed during the month as proposed by the SURVEYOR and accepted by the CITY.

4.3 COST-PLUS-FIXED FEE METHOD

Compensation for services performed under the Cost-Plus-Fixed Fee Method shall be based on reimbursement of actual costs incurred by the SURVEYOR in its performance of services under an Addendum (hereinafter referred to as "Reimbursable Costs") plus a percentage Fixed Fee.

4.4 DIRECT LABOR COSTS METHOD

Compensation for services performed under the Direct Labor Costs Method shall be an amount equal to SURVEYOR's direct labor costs plus an overhead cost, as defined in Section 4.5.2, and a negotiated operating profit margin plus other "Reimbursable Costs", as defined in Section 4.5.3 and Section 4.5.4.

4.5 REIMBURSABLE COSTS

Reimbursable Costs are Direct Salary Costs, Overhead Costs, Subconsultant Costs, and Other Direct and Unit Costs, as are defined in Section 4.5.1 through Section 4.5.4.

4.5.1 DIRECT LABOR COSTS

Direct Labor Costs shall be defined as the actual wages and salaries paid to professional, technical and other personnel of the SURVEYOR while such personnel are engaged directly in the performance of the services under this Agreement. A schedule of ranges of actual hourly rates currently paid by the SURVEYOR, including its subconsultants, to classifications of personnel likely to be employed to perform services under this Agreement is contained in "EXHIBIT C - HOURLY RATES SCHEDULE", which is attached hereto and made a part hereof. Any revisions to said ranges of actual hourly rates shall be negotiated with and approved by the CITY's Designated Representative (Section 6.2) prior to being charged.

4.5.2 OVERHEAD COSTS/OVERHEAD RATE

The Reimbursable Costs for SURVEYOR's Overhead Costs include allowances for Fringe Benefits and General and Administrative Overhead. The types of costs, which are included in such Overhead Costs, are those normally recorded and accounted for by the SURVEYOR, as are generally defined in Section 4.5.2.1 and Section 4.5.2.2. Overhead Costs shall be calculated as a percentage of Direct Labor Cost (hereinafter referred to as "Overhead Rate"). The overhead rate shall be set at _____.

The operating profit margin shall be negotiated between the CITY and the SURVEYOR for each Addendum.

4.5.2.1.Fringe Benefits

Fringe Benefits shall include, but not be limited to, the following:

- a. Worker's compensation insurance.
- b. State and Federal unemployment insurance.
- c. Employer contributions to Social Security.
- d. Other payroll taxes.
- e. Salary continuation insurance.
- f. Life, medical, and dental insurance.
- g. Vacation, sick leave, and holiday pay.
- h. Incentive compensation.
- i. Retirement benefits.

4.5.2.2. General and Administrative Overhead

General and Administrative Overhead includes the following indirect costs which are not identifiable as directly allocable to the Assignment:

- a. Provisions for office, light, heat, and similar items for working space, depreciation allowances or rental of furniture, equipment and engineering instruments, automobile expenses, and office and drafting supplies.
- b. Taxes and insurance, other than those included as Fringe Benefits, but excluding State and Federal income taxes and applicable sales taxes.
- c. Library and periodical expense and other means of keeping abreast of advances in the real estate field, such as attendance at technical and professional meetings.
- d. Executive, administrative, accounting, legal, stenographic, and clerical salaries and expenses, other than Assignment-identifiable salaries included in salary-related costs and Assignment-related expenses included in reimbursable non-salary expenses, plus salary or imputed salaries of principals, to the extent that they perform general executive and administrative services as distinguished from technical or advisory services directly applicable to the Assignment.
- e. Business development expenses, including salaries of principals and salary costs of employees so engaged.
- f. Provision for loss of productive time of technical employees between assignments and for time of principals and employees on public interest assignments.

4.5.3 SUBCONSULTANT COSTS

This item includes costs and expenses incurred in connection with subcontracts and consulting agreements entered into by the SURVEYOR with third parties with prior CITY approval, for performance of certain services, which the SURVEYOR agrees to render pursuant to this Agreement. Administrative surcharges for subconsultant services are not allowable costs. SURVEYOR's cost for subconsultant coordination must be delineated in the man-hour estimate for the respective task.

4.5.4 OTHER DIRECT COSTS

Other Direct Costs include the actual costs to the SURVEYOR of project-related expenses that are required to complete the Assignment, as defined in the following paragraphs.

4.5.4.1 Equipment, Materials, and Supplies

This item includes all equipment, materials, and supplies used and consumed directly in the performance of the services hereunder not included in the SURVEYOR's General and Administrative Overhead costs, as determined and defined in Section 4.5.2.2 above, such as: special report binders; and costs of plans, drawings and reports from other public agencies, utility companies, and other like bodies. Any equipment or material items purchased solely for the performance of the Assignment covered by this Agreement, which individually have a value in excess of \$25.00, shall be the property of the CITY and will be given to the CITY at the termination of this Agreement.

4.5.4.2 Reproductions

This item includes the identifiable costs of copying, reproducing and printing of plans, specifications, sketches, drawings, reports, photographs and correspondence.

4.5.4.3 Communications and Shipping

This item includes identifiable long-distance communications, postage and express charges.

4.5.4.4 Travel and Subsistence

This item includes local and long distance travel, subsistence, and transportation expenses of personnel for the performance of the Assignment, not to exceed rates and limits as established by the CITY. Such CITY limits are described in "EXHIBIT D - CITY OF KISSIMMEE TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES", which is attached hereto and made a part hereof.

4.5.4.5 Miscellaneous

This item includes any other identifiable project-related costs and expenses incurred by the SURVEYOR in connection with the services performed under the terms of this Agreement that are not applicable to general overhead, including but not limited to: special equipment rental costs; costs for temporary personnel; and CADD services.

4.5.5 COST LIMITATION

4.5.5.1 The total of all Reimbursable Costs actually incurred by the SURVEYOR, as determined and defined in Section 4.5.1 through Section 4.5.4, for services performed under an Addendum, will not exceed the Cost Limitation established for and indicated in the Addendum without a formal amendment to the Addendum.

4.5.5.2 If it becomes apparent at any time before the services to be rendered under an Addendum are about eighty (80) percent complete, that the SURVEYOR's estimated total Reimbursable Costs for performance of services under an Addendum are forecasted by the CITY or SURVEYOR to exceed the Cost Limitation indicated in the Addendum, the CITY and SURVEYOR shall meet to review the forecast and, if necessary, to either increase the Cost Limitation for the Addendum to provide additional cost recovery to the SURVEYOR, or renegotiate the scope of services of the Addendum so that the Cost Limitation will not be exceeded. The results of any such review requiring modification to this Agreement will be detailed in a formal amendment to the Addendum.

4.5.5.3 The CITY is not obligated to reimburse the SURVEYOR for costs incurred in excess of the Cost Limitation indicated for the Addendum. The SURVEYOR'S liabilities, commitments, or expenditures incurred in excess of the Cost Limitation for an Addendum prior to approval by the CITY shall be at the SURVEYOR's risk and expense, unless mutually agreeable to in writing by the SURVEYOR and the CITY.

4.5.6 FIXED FEE

In addition to the Reimbursable Costs described in Section 4.5, the CITY shall pay the SURVEYOR a Fixed Fee when the SURVEYOR is compensated by the Cost-Plus- Fixed Fee Method. The amount of the Fixed Fee shall be negotiated between the CITY and the SURVEYOR for each Addendum. The Fixed Fee is not subject to review, audit, or modification except as otherwise provided in the Addendum. The entire Fixed Fee for an Addendum will be due the SURVEYOR whether or not the Reimbursable Costs estimates are reached for the Addendum, unless the Agreement is terminated in Accordance with Section 8.0.

4.5.7 ADDENDUM PRICE

- 4.5.7.1 The total Addendum Price for each Addendum consists of: (1) lump sum price; (2) the sum of the Cost Limitation and Fixed Fee; or (3) the Direct Labor Cost times an overhead rate, as defined in Section 4.5.2, plus operating profit margin plus Other Direct Costs, which amount shall not be exceeded without formal amendment to the Addendum, unless Agreement is terminated in accordance with Section 8.0.
- 4.5.7.2 In the event any action or combination of actions taken pursuant to Section 7.0, Changes in Scope, of this Agreement are estimated by the SURVEYOR, with the written concurrence of the CITY, to cause a material increase or decrease in the scope of services of any Addendum, an equitable adjustment to the Addendum Price shall be made. Any request by the SURVEYOR or by the CITY for an adjustment of the Addendum Price must be asserted in writing within forty-five (45) days from the date of receipt by the SURVEYOR of the CITY's notification of changed work, unless the CITY shall grant a further period of time for such request resolution.

4.5.8 PROGRESS PAYMENTS TO THE SURVEYOR

- 4.5.8.1 For an Addendum performed under the Cost-Plus-Fixed Fee or Direct Labor Costs Method of compensation, the SURVEYOR shall submit at the end of each monthly period an invoice of Reimbursable Costs incurred in such period. A Cost-Plus-Fixed Fee invoice shall also include an increment of the Fixed Fee earned in such a period. A Direct Labor Cost invoice shall include the overhead rate as stated herein plus the agreed upon operating profit margin. All invoices for Reimbursable Costs shall be itemized in an invoice format acceptable to the CITY. All Reimbursable Costs included on the invoices shall be taken from books of accounts kept by the SURVEYOR and shall be supported by the SURVEYOR's monthly "Billing Cost Detail Report". The portion of the Fixed Fee earned in such monthly period shall be determined on the basis of relative work progress accomplished in each monthly period as agreed by the CITY's Designated Representative.
- 4.5.8.2 Each invoice is to be accompanied with a narrative statement from the SURVEYOR describing the work accomplished by the SURVEYOR during the period covered by the invoice by reference to the tasks described in the Scope of Services contained in the Addendum.

4.6 **INVOICE PROCESSING**

The CITY will process invoices received by the CITY for payment within thirty (30) days of receipt. The SURVEYOR will be notified of any questionable items contained in invoices submitted by the SURVEYOR within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the SURVEYOR's invoices within thirty (30) days of receipt of the invoices by the CITY.

At the end of the thirty (30) day period, the CITY shall pay the SURVEYOR the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
 Assistant Director of Public Works & Engineering and City Engineer
 Public Works & Engineering Department
 City of Kissimmee
 101 Church Street, Suite 301
 Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the SURVEYOR employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.7 **PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION**

In the event that an Addendum of this Agreement is terminated or canceled, or the SURVEYOR's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.8 **ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT**

If instructed to do so by the CITY, the SURVEYOR shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the SURVEYOR, the SURVEYOR may be entitled to additional compensation. The additional compensation shall be requested by the SURVEYOR on a revised fee quotation proposal, which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5.0

WORK COMMENCEMENT/IMPLEMENTATION SCHEDULE/LENGTH OF AGREEMENT

5.1 WORK COMMENCEMENT

The SURVEYOR will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 IMPLEMENTATION SCHEDULE

The SURVEYOR and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the SURVEYOR is delayed due to no fault of the SURVEYOR, which delays the completion of any Addendum of the Assignment, the SURVEYOR shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the SURVEYOR will be negotiated to the mutual agreement of the CITY and the SURVEYOR in the event such delay causes any Addendum's costs to increase for reasons beyond the SURVEYOR's control.

5.3 TIME FOR COMPLETION

The provisions of this Agreement and the various rates of compensation for SURVEYOR's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. The SURVEYOR's obligation to render services hereunder will extend for a period, which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6.0

CITY'S "DESIGNATED REPRESENTATIVE"

6.1 GENERAL

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

- 6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the SURVEYOR and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the SURVEYOR;

- 6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Agreement;
- 6.1.3 Giving prompt written notice to the SURVEYOR whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the SURVEYOR's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Until further notice from the Director of the Department of Public Works, the Designated Representative for this Agreement is:

Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/ City Engineer
City of Kissimmee
Department of Public Works & Engineering
101 Church Street, Suite 301
Kissimmee, Florida 34741

SECTION 7.0 CHANGES IN SCOPE

The CITY or the SURVEYOR may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of SURVEYOR's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the SURVEYOR, shall be incorporated by formal amendment to the Addendum.

SECTION 8.0 TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the SURVEYOR as a direct result of the SURVEYOR's failure to perform; or
- 8.1.2 The quality of the services performed by the SURVEYOR is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The SURVEYOR or any employee or agent of the SURVEYOR is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the SURVEYOR, or

- 8.1.4 The SURVEYOR becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The SURVEYOR violates the Standards of Conduct provisions in Section 12.0 herein.
- 8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the SURVEYOR requesting that the SURVEYOR show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the SURVEYOR of said show cause notice, the CITY may consider the SURVEYOR to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY SURVEYOR FOR CAUSE

The SURVEYOR may cancel this Agreement if:

- 8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or
- 8.2.2 The CITY fails to pay the SURVEYOR in accordance with Section 4.0 - Compensation.
- 8.2.3 In the event of either of the causes described in Section 8.2, the SURVEYOR may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the SURVEYOR within fifteen (15) days of the receipt by the CITY of said show cause notice, then the SURVEYOR may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the SURVEYOR of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda, which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the SURVEYOR to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the SURVEYOR. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.

8.5.2 In the case of the CITY terminating the SURVEYOR, the SURVEYOR shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the SURVEYOR in performing the services under this Agreement, regardless of whether the work on such documents has been completed or is in progress.

8.6 SUSPENSION

8.6.1 The performance of the SURVEYOR's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the SURVEYOR's services hereunder, the CITY shall so notify the SURVEYOR in writing, such suspension becoming effective upon the date of its receipt by the SURVEYOR, and the CITY shall promptly pay to the SURVEYOR all fees which have become due and payable to the SURVEYOR to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the SURVEYOR for the suspended services unless and until the CITY notifies the SURVEYOR that the services of the SURVEYOR called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the SURVEYOR's services hereunder are to be resumed, the SURVEYOR shall complete the services of the SURVEYOR called for in this Agreement and the SURVEYOR shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the SURVEYOR under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the SURVEYOR under this Agreement unless and until the SURVEYOR has attained that state of work where the same would be due and payable to the SURVEYOR under the provisions of this Agreement.

- 8.6.2 If the aggregate time of the CITY's suspension or suspensions of the SURVEYOR's services under any Addendum of this Agreement exceeds sixty (60) days, then the SURVEYOR and the CITY shall, upon request of the SURVEYOR, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the SURVEYOR hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the SURVEYOR for the balance of the services to be performed hereunder. No increase in compensation to the SURVEYOR shall be allowed unless it is based upon clear and convincing evidence of an increase in the SURVEYOR's costs attributable to the aforesaid suspensions.

SECTION 9.0 INDEMNITY AND INSURANCE

9.1 GENERAL

If any claims are made against the CITY, including its agents and/or employees, or if the CITY is sued or held liable in any manner whatsoever, as a result of, or by reason of, any negligent actions or omissions, or negligent violations of any applicable law, rule or regulation taken by the SURVEYOR in connection with the rendering of services to the CITY under this Agreement, then and in that event the SURVEYOR will at all times indemnify and save the CITY and its agents and/or employees, harmless from and against any liability for damages, compensations, suits, judgments, loss, costs, charges and expenses of whatsoever kind of nature, including but not limited to counsel and engineer's fees, and court costs, which they shall or may at any time sustain or incur.

9.2 INSURANCE

The SURVEYOR will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the SURVEYOR's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision, which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty (30) days prior notice will be given to the CITY.

9.2.1 WORKERS' COMPENSATION

The SURVEYOR will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subcontractor to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 COMPREHENSIVE GENERAL LIABILITY

The SURVEYOR will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 COMPREHENSIVE AUTOMOBILE LIABILITY

The SURVEYOR will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 PROFESSIONAL LIABILITY INSURANCE

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the SURVEYOR.

Said Professional Liability Insurance shall provide for all sums which the SURVEYOR shall be obligated to pay as damages for claims arising out of the service performed by the SURVEYOR, or any person or subcontractor employed by the SURVEYOR, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the SURVEYOR under the scope of this Agreement including any amendment thereto.

9.2.5 The SURVEYOR shall furnish Certificates of Insurance forwarded directly to the following:

Director of Public Works & Engineering
City of Kissimmee
Stormwater Engineering Department
101 Church Street, Suite 301
Kissimmee, Florida 34741

With an information copy to the CITY's Purchasing Department and the Designated Representative identified in Section 6.2. The certificates shall clearly indicate that the SURVEYOR has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10.0 NEGOTIATION DATA

The SURVEYOR hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the SURVEYOR's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the SURVEYOR's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11.0 OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the SURVEYOR in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the SURVEYOR. The SURVEYOR may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the SURVEYOR pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the SURVEYOR for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the SURVEYOR; and the CITY shall indemnify and hold harmless the SURVEYOR from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting there from. Any such verification or adaptation by the SURVEYOR will entitle the SURVEYOR to further compensation at rates to be agreed upon by the CITY and the SURVEYOR.

Any documents given to or prepared or assembled by the SURVEYOR and its subcontractors under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The SURVEYOR may maintain copies of all work performed under this Agreement for the CITY.

The SURVEYOR shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12.0 STANDARDS OF CONDUCT

- 12.1 The SURVEYOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the SURVEYOR, to solicit or secure this Agreement and that the SURVEYOR has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the SURVEYOR any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making of this Agreement.
- 12.2 The SURVEYOR shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

- 12.3 The SURVEYOR hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the SURVEYOR, or any interest in property, which the SURVEYOR may have. The SURVEYOR further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the SURVEYOR to remove any employee or representative of the SURVEYOR from working on this Agreement, which the CITY determines, is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the SURVEYOR in writing of the CITY's objections prior to the SURVEYOR's removal of any employee or representative.
- 12.5 The SURVEYOR shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13.0 ACCESS TO RECORDS/AUDIT

- 13.1 The SURVEYOR shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The SURVEYOR shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the SURVEYOR's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The SURVEYOR shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14.0 CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the SURVEYOR shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement.
- 14.2 The SURVEYOR shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the SURVEYOR beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

**SECTION 15.0
ASSIGNABILITY**

The SURVEYOR shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the SURVEYOR from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

**SECTION 16.0
CONTROLLING LAWS**

This Agreement is to be governed by the laws of the State of Florida.

**SECTION 17.0
FORCE MAJEURE**

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

**SECTION 18
TIME IS OF THE ESSENCE**

18.1 Time is of the essence of this Agreement.

**SECTION 19.0
EXTENT OF AGREEMENT**

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the SURVEYOR and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES
EXHIBIT B - ADDENDUM FORM
EXHIBIT C - HOURLY RATES SCHEDULE
EXHIBIT D - CITY OF KISSIMMEE TRAVEL AND SUBSISTENCE POLICY AND
ALLOWANCES
EXHIBIT E - PROJECT STAFFING CHART

20.1 CLAIMS AND DISPUTES

20.2 REMEDIES

20.3 WAIVER OF JURY TRIAL; ATTORNEY'S FEES

City Attorney At Large Date 6/21/18

EXHIBIT A
SCOPE OF SERVICES

Under this continuing services contract the SURVEYOR will provide a range of professional services for road, drainage and utility projects. Those services include, but are not limited to, topographical maps, property surveys, utility survey's including location services, map generation, review of right-of-way maps, appraisals, deeds, surveys and other maps/documents for use in the survey process, coordination with the CITY and other consultants the CITY has retained as well as providing advice and recommendations to the CITY. The SURVEYOR will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the SURVEYOR will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the SURVEYOR will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

EXHIBIT B

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:
DATE:	AMENDMENT:
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:	
DESCRIPTION OF ASSIGNMENT:	
FORM OF COMPLETED DELIVERABLES:	
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.	
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.	
Previous Contract Total Dollars:	\$
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	☐ +
NET CONTRACT TOTAL DOLLARS:	\$
Accepted By: _____ (signature)	Requested By: _____ (signature)
Title/Position: _____	Approved By: _____ (signature)
PW Director: _____ (signature)	City Commission Approval Date: _____
Approved as to Form and Legality: _____ (signature)	



900 Shady Lane • Kissimmee, FL 34744
 Phone: (407) 847-2179
 Fax: (407) 847-6140

**CITY OF KISSIMMEE CONTINUING SURVEY RATE SHEET
 PER CONTRACT
 HOURLY RATE SCHEDULE 2018
 "EXHIBIT C"**

Surveying

Principal Surveyor (PSM).....	\$170 per hour
CADD Surveyor (PSM)	\$140 per hour
CADD Surveyor	\$120 per hour
Field Crew (3-man)	\$195 per hour
Field Crew (2-man)	\$150 per hour
Field Crew (1-Man w/truck).....	\$120 per hour
Field Crew (1-man – GPS)	\$100 per hour
Secretarial Services	\$ 50 per our

EXHIBIT D
CITY OF KISSIMMEE TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

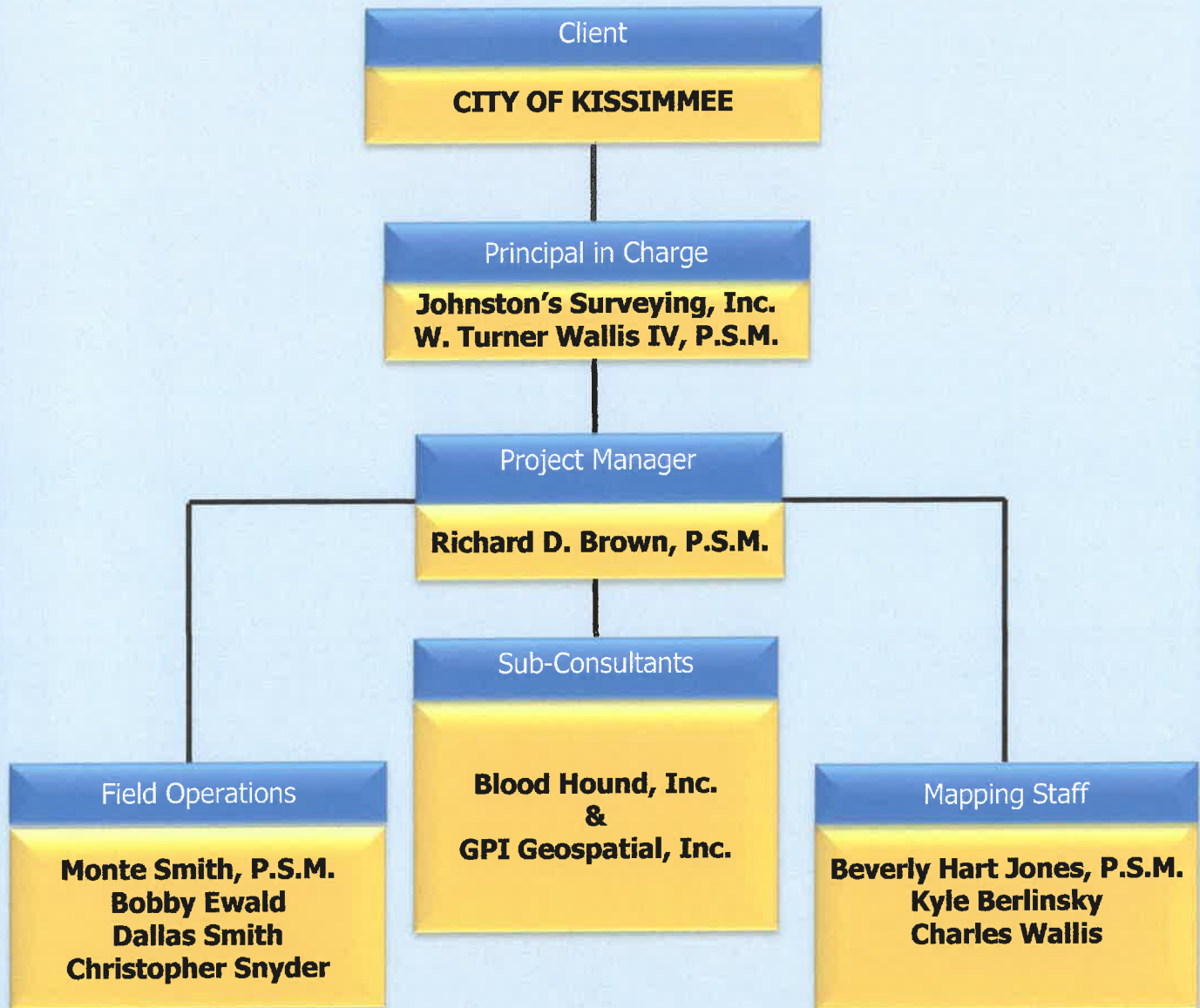
1. Reimbursement for air fair shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The SURVEYOR shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the SURVEYOR.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

PROJECT TEAM ORGANIZATION CHART



The Johnston's Surveying team has 159 combined years of surveying experience.

ITEM 7.R**WORK ORDER NO. 1 TO MICHAEL BAKER INTERNATIONAL, INC. FOR PROFESSIONAL ENGINEERING SERVICES IN SUPPORT OF THE 20-YEAR STORMWATER NEEDS ANALYSIS REQUIRED BY THE FLORIDA LEGISLATURE****Request**

Approval of Work Order No. 1 to Michael Baker International, Inc. for professional engineering services in support of the 20-year stormwater needs analysis required by the Florida Legislature.

Explanation

During the 2021 legislative session, the Florida Legislature (Section 403.9302, Florida Statute) passed House Bill 53, which now requires all local municipalities, counties, and independent special districts that have stormwater management systems, programs, or wastewater management services, to develop a 20-year needs analysis report to be updated every five years. This analysis includes a comprehensive review of stormwater and wastewater budgets, revenues, and expenditures, and a 20-year projection of those figures. It also includes an inventory of all stormwater, flood control, and resilience projects and identification of funding gaps for future projects.

The City has selected Michael Baker International, Inc. under its continuing services agreement (executed July 6, 2021), to provide professional services for completing the Stormwater Needs Analysis Report required to be completed by June 30, 2022. These services will require data collection of existing and proposed stormwater related systems/programs and include a 20-year forecast. Part of this effort will also include current and projected costs for operation and maintenance, flood protection, water quality, resiliency, and infrastructure replacement. The cost of these services is not to exceed \$40,000.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
40945203 503131		Decrease	300,000	40,000

Financial Summary:

Adequate funds are available in the Stormwater Utility Fund to cover the cost of these services.

Recommendation

Staff recommends approval of Work Order No. 1 to Michael Baker International, Inc. for professional engineering services in support of the 20-year stormwater needs analysis required by the Florida Legislature.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. Michael Baker Task Work Order #1 Signed
2. Michael Baker Scope- Stormwater Needs Analysis
3. Supplemental_Michael Baker Continuing Services Agreement_ 2021 Executed



**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

Work Order #1
Page 423 of 622

Purchase Order#:

12/6/2021

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to **Michael Baker International, Inc.** with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

Provide supporting services to the City on complying information assessment required by 2021 Florida Legislature (Section 403.9302, Florida Statute) of the City's existing and proposed stormwater program and system with a 20-Year forecast Stormwater Needs Analysis Report

FORM OF COMPLETED DELIVERABLES:

Completed assessment report submitted and approved by the County on or before June 30, 2022

BASIS OF PAYMENT: Services shall be made on the basis of **Billable hour's** method in accordance with the Scope of Services, the total not to exceed **\$40,000** without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within **210** calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Professional Engineering Services	\$40,000.00
2)	
3)	
4)	
5)	
	\$40,000.00
Contract Dollars:	\$40,000.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$40,000.00

Accepted By: Paul Snead, PE 
(Signature)

Title/Position: Associate VP, Orlando Office Manager

City Engineer: Ashley L. Willis Digitally signed by Ashley L. Willis
DN: cn=Ashley L. Willis, o=Public Works & Engineering, ou=Engineering,
email=awillis@kissimmee.org, c=US
Date: 2021.12.10 09:23:26 -0500
City Engineer (Signature)

Approved By: 
Director, PW&E (Signature)

Requested By: 
(Signature)

Approved By: _____
City Manager (Signature)

Approved By: _____
Mayor (Signature)

City Commission Approval Date: _____
(If Required)

Approved as to Form and Legality:

City Attorney (Signature)

Scope of Services for City of Kissimmee Support Services for Stormwater Needs Analysis

The City of Kissimmee (City) has requested Michael Baker International, Inc. (Engineer) to provide support services for completion of the 20-Year Stormwater Needs Analysis (“the assessment”) recently required by the 2021 Florida Legislature (Section 403.9302, Florida Statute). The assessment will require information about the City’s existing and proposed stormwater program (i.e., NPDES, FEMA, NRP/BMAP, O&M, etc.) and system (i.e., infrastructure such as pipes, inlets, ponds, BMPs, etc.) with a 20-year forecast. This information will be loaded into a form provided by the office of Economic & Demographic Research (EDR) who will compile the information statewide for reporting to the Legislature.

The assessment is due to Osceola County by June 30, 2022. Osceola County (County) will then be required to compile the local information for submittal to EDR and the Secretary of the Florida Department of Environmental Protection (FDEP) by July 31, 2022.

The scope of work for this task is anticipated to evolve as additional information is provided by EDR and through coordination with the County. Therefore, the scope of services for this task is intended to be flexible to meet the needs of the City. The project schedule will be 7 months beginning in January 2022 and ending by July 31, 2022.

The following sections present some of the anticipated tasks to be provided by Engineer.

Coordination

Engineer anticipates attending coordination meetings with the County, EDR, internally with City staff as well as with other local municipalities. The meetings may include the preparation of exhibits, agendas and minutes as needed.

Stormwater Needs Analysis Form

The assessment form is separated into 8 parts with varying degrees of information required including:

- Descriptive and quantitative information on the City’s stormwater programs and infrastructure.
- Prioritized Stormwater Goals
- Current and Projected Population (*to be provided by EDR*)
- Current and Projected Stormwater Service Area
- Current and Projected Costs for O&M, flood protection, water quality, resiliency, and infrastructure replacement. (includes a list of future projects and/or anticipated needs)
- Current and Recent Funding
- Future Funding Plan

Through coordination with City staff and the County, the Engineer will develop a strategy to obtain the required information and then evaluate and compile for purposes of completing the form. The Engineer’s recommendations will be presented to the City staff for review and approval with exhibits and supporting documentation as required. All analysis and documentation will be catalogued for use in the City’s ongoing stormwater master planning process.

Cost and Schedule

Engineer recommends a **time and materials contract** where the City is only billed for the actual time charged by Engineer. We recommend an initial not-to-exceed fee of **\$40,000** which is anticipated to provide approximately 30 to 40 hours per month (on average) over the 7-month schedule. Our hourly rate schedule is per our 2021 contract and included on the following page.

CITY OF KISSIMMEE
PROFESSIONAL ENGINEERING CONTINUING SERVICES CONTRACT
JUNE 2021

<u>Consultant</u>	<u>Discipline</u>	<u>Description</u>	<u>Unit</u>	<u>Loaded Rate</u>
Michael Baker International, Inc.	Design	Principal	HR	\$287.00
		Project Manager	HR	\$171.18
		Chief Engineer	HR	\$268.40
		Senior Engineer	HR	\$224.09
		Project Engineer	HR	\$147.59
		Engineer Intern	HR	\$98.39
		Designer	HR	\$123.57
		Intern	HR	\$57.00
		Senior Environmental Scientist	HR	\$233.73
		Environmental Scientist	HR	\$148.47
		Administrative Assistant	HR	\$77.72

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND MICHAEL BAKER INTERNATIONAL, INC.
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 6th day of July, 2021 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **MICHAEL BAKER INTERNATIONAL, INC.** whose address is 200 South Orange Avenue, Suite 1050, Orlando, Florida 32801, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2021- 003, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that **MICHAEL BAKER INTERNATIONAL, INC.** is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER's services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

- 4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:
 - A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
 - B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.
- 4.2 **REIMBURSABLE EXPENSES**. Reimbursable Expenses are in addition to compensation for

professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN ENGINEER'S employees as follows:

Page 429 of 622

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 INVOICE PROCESSING

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
Public Works & Engineering Department
City of Kissimmee
101 N. Church Street
Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER may be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 WORK COMMENCEMENT

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 IMPLEMENTATION SCHEDULE

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 TIME FOR COMPLETION

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 GENERAL

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;

6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:

Mr. Ashley Willis, P.E.

Assistant Director of Public Works & Engineering/City Engineer

City of Kissimmee

Department of Public Works & Engineering

101 N. Church Street

Kissimmee, Florida 34741

MICHAEL BAKER INTERNATIONAL, INC.

200 South Orange Avenue, Suite 1050

Orlando, Florida 32801

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0 herein.
- 8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated

Representative may send a certified letter to the DESIGN ENGINEER requesting that the DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

- 8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or
- 8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.
- 8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

- 8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.
- 8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the work on such documents has been completed or is in progress.

8.6 SUSPENSION

- 8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the

performance of the DESIGN ENGINEER's services hereunder, the CITY shall suspend the DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

- 8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

Pursuant to Section 725.08(1), F.S. the DESIGN ENGINEER shall indemnify and hold harmless the CITY from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the DESIGN ENGINEER in the performance of the contract.

If any claims are made against the CITY, including its agents and/or employees, or if the CITY is sued or held liable in any manner whatsoever, as a result of, or by reason of, any negligent actions or omissions, or negligent violations of any applicable law, rule or regulation taken by the DESIGN ENGINEER in connection with the rendering of services to the CITY under this Agreement, then and in that event the DESIGN ENGINEER will at all times indemnify and save the CITY and its agents and/or employees, harmless from and against any liability for damages, compensations, suits, judgments, loss, costs, charges and expenses of whatsoever kind of nature, including but not limited to counsel and engineer's fees, and court costs, which they shall or may at any time sustain or incur.

9.2 INSURANCE

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will

provide Certificates of Insurance to the CITY, evidencing such insurance, within ~~Page 434 of 622~~^s following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 WORKERS' COMPENSATION

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 COMPREHENSIVE GENERAL LIABILITY

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 COMPREHENSIVE AUTOMOBILE LIABILITY

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 PROFESSIONAL LIABILITY INSURANCE

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for professional negligence claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mrs. Natrevia Gradney - Mitchell
Director of Public Works & Engineering
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated Representative identified in Section 6.2. The certificates shall clearly indicate that the DESIGN ENGINEER has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data

supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

- 12.1 The DESIGN ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the DESIGN ENGINEER, to solicit or secure this Agreement and that the DESIGN ENGINEER has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the DESIGN ENGINEER any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making of this Agreement.
- 12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the

DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that no conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.

Page 436 of 622

- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.
- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement. Notwithstanding the foregoing, the only standard of care applicable to Design Engineer's Services shall be that care and skill ordinarily used by members of the same profession practicing under similar conditions at that time and at the Project locale.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 Time is of the essence of this Agreement.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES

20.1 CLAIMS AND DISPUTES

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 WAIVER OF JURY TRIAL; ATTORNEY'S FEES

It is mutually agreed by and between City and Owner 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.

Signature page to follow

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

MICHAEL BAKER INTERNATIONAL, INC.

By: *Paul Quentin Sneed*

PAUL QUENTIN SNEED

Title: OFFICE Mgr. ASS. VT

Date: 6/16/2021

STATE OF FLORIDA)

COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 16 day of June, 2021, by Paul Quentin Sneed as Ass. VP of Michael Baker Int'l, Inc. a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: *Pamela Wolfgramm*

Print Name: Pamela Wolfgramm

My Commission Expires: 03-31-2025



CITY OF KISSIMMEE

Olga Gonzalez
Olga Gonzalez, Mayor-Commissioner

Attest

Linda Hansell
Linda Hansell, City Clerk

Approved as to form and legality

Olga Sanchez de Guzman
City Attorney

SCOPE OF SERVICES

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:
DATE:	AMENDMENT:
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:	
DESCRIPTION OF ASSIGNMENT:	
FORM OF COMPLETED DELIVERABLES:	
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.	
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.	
Previous Contract Total Dollars:	\$
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	☐ +
NET CONTRACT TOTAL DOLLARS:	
\$	

Accepted By: _____ (signature)	Requested By: _____ (signature)
Title/Position: _____	Approved By: _____ (signature)
PW Director: _____ (signature)	City Commission Approval Date: _____
Approved as to Form and Legality: _____ (signature)	

EXHIBIT C
HOURLY RATE SCHEDULE

CITY OF KISSIMMEE
PROFESSIONAL ENGINEERING CONTINUING SERVICES CONTRACT
JUNE 2021

<u>Consultant</u>	<u>Discipline</u>	<u>Description</u>	<u>Unit</u>	<u>Loaded Rate</u>
Michael Baker International, Inc.	Design	Principal	HR	\$287.00
		Project Manager	HR	\$171.18
		Chief Engineer	HR	\$268.40
		Senior Engineer	HR	\$224.09
		Project Engineer	HR	\$147.59
		Engineer Intern	HR	\$98.39
		Designer	HR	\$123.57
		Intern	HR	\$57.00
		Senior Environmental Scientist	HR	\$233.73
		Environmental Scientist	HR	\$148.47
		Administrative Assistant	HR	\$77.72
Johnston's Surveying, Inc.	Survey	Principal Surveyor (PSM)	HR	\$180.00
		CADD Surveyor (PSM)	HR	\$150.00
		CADD Surveyor	HR	\$130.00
		Field Crew (3-man)	HR	\$200.00
		Field Crew (2-man)	HR	\$160.00
		Field Crew (1-man w/truck-PSM)	HR	\$130.00
		Field Crew (1-man - GPS	HR	\$110.00
		Secretarial Services	HR	\$60.00
ECHO UES, Inc.	SUE / Survey	SUE Project Manager	HR	\$190.31
		Senior Surveyor	HR	\$177.52
		Project Surveyor	HR	\$123.94
		Utility Coordinator	HR	\$118.62
		CADD Technician	HR	\$89.06
		Secretary/Clerical	HR	\$84.36
		2 Person SUE Crew	HR	\$195.32
		3 Person SUE Crew	HR	\$237.22
		2 Person Survey Crew	HR	\$153.71
		3 Person Survey Crew	HR	\$189.02
		4 Person Survey Crew	HR	\$231.79

CITY OF KISSIMMEE
PROFESSIONAL ENGINEERING CONTINUING SERVICES CONTRACT
JUNE 2021

<u>Consultant</u>	<u>Discipline</u>	<u>Description</u>	<u>Unit</u>	<u>Loaded Rate</u>
McKim & Creed	SUE / Survey	Survey Regional Manager	HR	\$175.00
		Senior Surveyor / Project Manager	HR	\$145.00
		Project Surveyor	HR	\$135.00
		Senior Survey CAD Technician	HR	\$105.00
		Survey CAD Technician	HR	\$90.00
		1 Person Survey Crew	HR	\$125.00
		2 Person Survey Crew	HR	\$160.00
		3 Person Survey Crew	HR	\$190.00
		LiDAR Tech II	HR	\$100.00
		LiDAR Tech III	HR	\$125.00
		Mobile LiDAR Survey Vehicle	DAY	\$2,500.00
		Utility Eng Manager	HR	\$180.00
		Utility Eng Senior PM	HR	\$150.00
		Utility Eng Technician	HR	\$75.00
		Utility Eng Specialist	HR	\$110.00
		Utility Eng Analyst	HR	\$90.00
		Utility Eng Designate Crew (2 Person)	HR	\$165.00
		Utility Eng Designate Crew (3 Person)	HR	\$210.00
		Utility Eng Vacuum Excavation Crew (2 Person)	HR	\$200.00
		Utility Eng Vacuum Excavation Crew (3 Person)	HR	\$250.00
		Core Rig Crew (1 Person)	HR	\$125.00
GEC, Inc.	Geotechnical / Contamination	Principal Engineer	HR	\$300.00
		Chief Engineer	HR	\$300.00
		Senior Engineer	HR	\$250.00
		Project Engineer	HR	\$150.00
		Senior Scientist	HR	\$200.00
		Project Scientist	HR	\$150.00
		Engineer Intern	HR	\$120.00
		Scientist	HR	\$120.00
		Construction Services Project Manager	HR	\$150.00
		Student Intern	HR	\$80.00
		Senior Engineering Technician	HR	\$110.00
		Engineering Technician	HR	\$70.00
		CADD/GIS Specialist	HR	\$150.00
		Draftsman	HR	\$100.00
		Contract Coordinator	HR	\$120.00
		Secretary	HR	\$80.00



**2021 Geotechnical
Field and Laboratory Testing
Fee Schedule**

Field Services

<u>Item</u>	<u>Unit</u>	<u>Cost</u>	<u>Item</u>	<u>Unit</u>	<u>Cost</u>
Truck Rig Mobilization	each	\$600.00	Drill Rig and Crew – Truck/Mud Bug (2 person)	hour	\$220.00
Mud Bug Rig Mobilization	each	900.00	Drill Rig and Crew – Truck/Mud Bug (3 person)	hour	300.00
CPT Rig Mobilization	each	1,200.00	Drill Rig and Crew – Track/Barge (3 person)	hour	450.00
Track Rig Mobilization	each	4,000.00	Field Permeability (0 – 10 ft) – Truck	each	420.00
Barge/Amphibious Mobilization - Crane	each	15,000.00	Field Permeability (10 – 25 ft) – Truck	each	500.00
Barge/Amphibious Mobilization - Ramp	each	12,000.00	Field Vane Shear Strength	each	500.00
Barge (without labor)	day	3,000.00	Hand Auger Boring with DCP	foot	25.00
Soil Survey/Coring/GPR Mobilization	each	400.00	Double Ring Infiltrometer	each	600.00
Support Boat Mobilization	each	550.00	Pavement Cores (no MOT w/base check)	each	250.00
Support Truck	day	160.00	Pavement Cores (no MOT w/o base check)	each	200.00
Support Boat	day	200.00	Roadway Pavement Cores (day with MOT)	each	350.00
Support Airboat	day	500.00	Roadway Pavement Cores (night with MOT)	each	400.00
Coring Machine	day	150.00	MOT Portable Safety Signs	day	50.00
GPS Unit	day	100.00	MOT Channelization Cones (each)	day	6.00
Soil Survey/Coring Crew (2 person)	hour	180.00	MOT Attenuator Truck	day	600.00
Soil Survey/Coring Crew (3 person)	hour	250.00	MOT Arrow Board	day	50.00
Ground Penetrating Radar/RoadScan	hour	400.00	MOT Traffic Control Officer	hour	75.00
Chainsaw	day	65.00	Surcharge for Night/Weekend Work	lump sum	50%
Temporary Piezometer	foot	35.00	Clearing Equipment	day	2,000.00

Drill Rig Unit Rates

Unit Rate Multipliers: Truck = Rate x 1.00, Mud Bug = Rate x 1.25 and Track/Barge = Rate x 1.50

		<u>0 - 50</u>	<u>50 - 100</u>	<u>100 - 150</u>	<u>150 - 200</u>	<u>200 - 250</u>	<u>250 - 300</u>
SPT Borings	foot	\$17.00	\$20.00	\$30.00	\$40.00	\$55.00	\$65.00
Auger/Rotary Wash Borings	foot	12.00	15.00	18.00	24.00	29.00	40.00
CPT Soundings	foot	15.00	16.00	18.00	20.00	22.00	26.00
HW Rock Coring	foot	50.00	55.00	60.00	70.00	80.00	90.00
Casing – 3 inch	foot	10.00	13.00	16.00	21.00	22.00	28.00
Casing – 4 inch	foot	12.00	14.00	18.00	22.00	26.00	32.00
Additional Split Spoon Samples	each	47.00	57.00	80.00	100.00	120.00	150.00
Undisturbed Samples	each	200.00	220.00	260.00	320.00	380.00	450.00
Borehole Grouting	foot	6.00	8.00	10.00	13.00	15.00	16.00

Laboratory Services

Unit Weight	each	\$50.00	Unconfined Compression – Soil	each	\$225.00
Natural Moisture Content	each	17.00	Unconfined Compression – Rock	each	150.00
Grain Size Analysis	each	72.00	Splitting Tensile – Rock	each	175.00
Percent Fines	each	48.00	Permeability	each	320.00
Hydrometer Analysis	each	140.00	Permeability with Backpressure Saturation	each	450.00
Organic Content	each	50.00	Corrosion Series	each	238.00
Atterberg Limits (Plastic & Liquid Limits)	each	125.00	Bitumen Extraction	each	100.00
Specific Gravity	each	85.00	Aggregate Gradation	each	60.00
Limerock Bearing Ratio	each	360.00	UU Triaxial Shear Strength (Q)	each	500.00
Consolidation with Rebound (12 loads)	each	620.00	CU Triaxial Shear Strength (R)	each	550.00
Consolidation Additional Loads	each	90.00	CD Triaxial Shear Strength (S)	each	650.00
Consolidation Extended Loads	each	150.00	Pocket Penetrometer/Torvane Shear Strength	each	26.00



**Geotechnical and
Environmental
Consultants, Inc.**

2021 Environmental Field and Laboratory Testing Fee Schedule

Drilling/Equipment Rates

Item	Unit	Cost	Item	Unit	Cost
Direct Push/Truck Drill Rig Mobilization	each	\$500.00	Well Completion (flush mount)	each	\$250.00
Mudbug Drill Rig Mobilization	each	700.00	Well Completion (aboveground)	each	350.00
Track Drill Rig Mobilization	each	4,000.00	Well Development	hour	110.00
Direct Push Rig	day	1,500.00	Drill Rig and Crew (2 person)	hour	220.00
Direct Push Well Materials	foot	30.00	Equipment Decontamination	hour	110.00
Temporary Piezometer	foot	30.00	Steam Cleaner	Day	150.00
Two-inch Monitoring Well - conventional rig (0-50 ft)	foot	35.00	Concrete Saw	Day	75.00
Two-inch Monitoring Well - conventional rig (50-100 ft)	foot	45.00	Concrete Coring Machine	Day	150.00
Expendable Sampling Equipment	day	65.00	Ground Penetrating Radar Survey	hour	400.00
Expendable Point	each	15.00	Surcharge for Night/Weekend Work	lump sum	50%

Soil/Sediment/Surface Water/Groundwater Sampling Equipment

Hand Auger Boring	foot	\$12.00	Organic Vapor Analyzer	day	\$160.00
Core Sampler	day	10.00	Multi-Parameter Water Quality	day	150.00
Dredge, Sediment Sampler	day	30.00	Turbidity Meter	day	50.00
Decontamination Station (hand sampling)	day	20.00	Dissolved Oxygen Meter	day	50.00
Support Truck	day	150.00	Photoionization Detector	day	160.00
Support Boat	day	200.00	pH meter w/Calibration Kit	day	50.00
Peristaltic Pump	day	50.00	Poly Sample Tubing	foot	1.50
Submersible Pump w/Variable Speed Controller	day	200.00	Silicon Pump Tubing (Peristaltic)	foot	3.50
Centrifugal Pump	day	75.00	Flow-Through Filtration	each	30.00
100 ft Water Level Meter	day	40.00	Miscellaneous Supplies	day	65.00
100 ft Oil/Water Interface Probe	day	100.00			

Miscellaneous Field Equipment

Survey Equipment (Level and Rod)	day	\$50.00	GPS Unit	day	\$100.00
----------------------------------	-----	---------	----------	-----	----------

Laboratory Services

RCRA 8 Metals (Water)	each	\$125.00	RCRA 8 Metals (Soil)	each	\$125.00
Herbicide/Pesticide Group (Water)	each	450.00	Herbicide/Pesticide Group (Soil)	each	450.00
Gasoline/Kerosene Group (Water)	each	400.00	Gasoline/Kerosene Group (Soil)	each	350.00
Used Oil Group (Water)	each	815.00	Used Oil Group (Soil)	each	755.00



2021 Construction Services Field and Laboratory Testing Fee Schedule

Field Services		
<u>Item</u>	<u>Unit</u>	<u>Cost</u>
Fresh concrete, grout and mortar sampling testing	hour	\$60.00
Rebound Hammer Testing	hour	65.00
Windsor Probe Test	each	50.00
Paint Thickness Testing	hour	65.00
In-Place Density Tests (Minimum 4 per trip)	each	28.00
Soil-Cement Sampling	hour	60.00
Pavement Cores (without MOT)	each	150.00
Minimum Trip Charge	trip	112.00
Coring Equipment Charge	trip	150.00
Surcharge for Night (5 pm to 7 am)/Weekend Work	lump sum	50%
Laboratory Services		
Proctor Compaction Test	each	\$125.00
Limerock Bearing Ratio	each	350.00
Florida Bearing Value	each	60.00
Asphalt Content FM 5-563	each	100.00
Asphalt Gradation	each	75.00
Core Bulk Specific Gravity	each	40.00
Soil Grain Size Analysis	each	70.00
Percent Fines Content	each	40.00
Atterberg Limits	each	110.00
Organic Content	each	50.00
Moisture Content	each	15.00
Corrosion Series	each	200.00
Compressive Strength Testing		
Concrete Cylinders	set of 4	80.00
Soil Cement Specimens	set of 3	90.00
Grout Prisms	set of 4	90.00
Mortar Cubes	set of 3	90.00
Concrete Cylinder (Client Supplied)	each	20.00
Lightweight Insulating Concrete Unit Weight	each	25.00

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

CITY OF
KISSIMMEE
1883

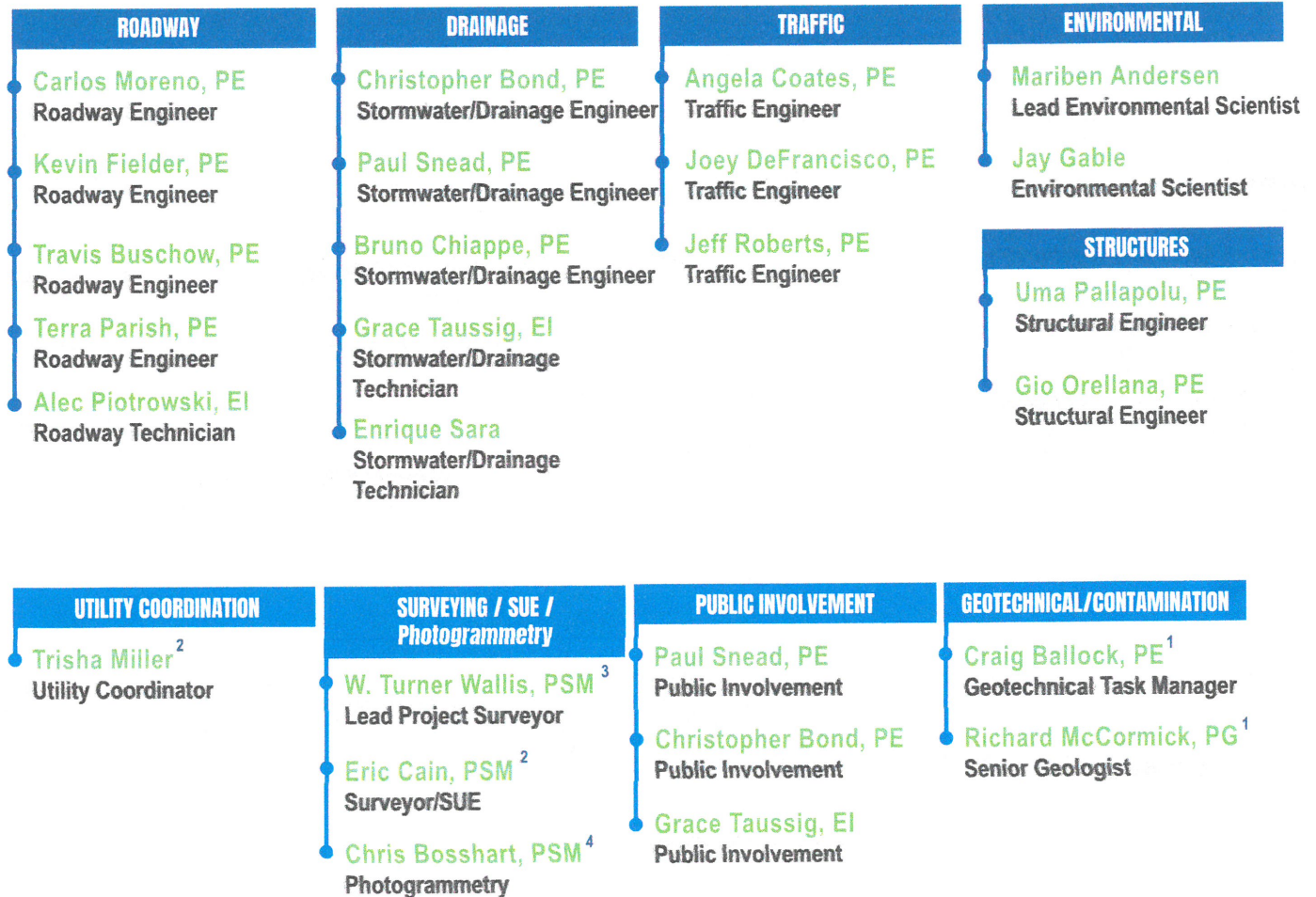
Michael Baker
INTERNATIONAL

Hank Schneider, PE
QA/QC Manager

Paul Snead, PE
Contract Manager

Mark Pitchford, PSM
Principal

Christopher Bond, PE
Deputy Contract Manager



ITEM 7.S

APPROVAL OF AN AGREEMENT FOR CODE ENFORCEMENT SPECIAL MAGISTRATE SERVICES

Request

Approval of an Agreement between the City of Kissimmee and Clifford Shepard of Shepard, Smith, Kholmyer and Hand, PA for Special Magistrate services.

Explanation

Pursuant to RFP #2022-002, a request for the retention of a qualified attorney to perform special magistrate services regarding Code Enforcement quasi-judicial proceedings, the City seeks to enter into an agreement with Clifford B. Shepard, Esq. of Shepard, Smith, Kholmyer and Hand, PA.

The majority of the funds are currently budgeted out of the Development Services Professional Services Account and a remaining portion of the funds will be paid out of the City Attorney's Other Contract Services Account.

Recommendation

Staff recommends approval of the Agreement.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter:

Attachment(s):

1. 12.14.21 Special Magistrate Agreement Code Enforcement Services

**SPECIAL MAGISTRATE AGREEMENT
CODE ENFORCEMENT SERVICES**

THIS AGREEMENT is made and entered into this _____ day of December, 2021 by and between Clifford B. Shepard of Shepard, Smith, Kohlmyer & Hand, PA, whose address is 2300 Maitland Center Pkwy, Ste 100, Maitland, FL 32751, hereinafter referred to as "Special Magistrate" and the City of Kissimmee, a Florida municipal corporation, whose address is 101 Church Street, Kissimmee, Florida 34741, hereinafter referred to as "City" and each represent as follows:

WITNESSETH:

WHEREAS, City desires to retain services of a competent and qualified attorney to provide Special Magistrate services regarding Code Enforcement matters and sensibly oversee quasi-judicial proceedings; and

WHEREAS, pursuant to RFP #2022-002, proposals for the retention of a qualified attorney to perform said services were submitted; and

WHEREAS, City has determined that it is in its best interest to enter into an Agreement to provide the "Scope of Work" services, attached hereto as Exhibit "A"; and

WHEREAS, Special Magistrate is competent, qualified and duly authorized to practice law in the State of Florida and desires to provide professional Special Magistrate services to the City for the adjudication of Code Enforcement hearings in accordance with the terms and conditions stated herein; and

NOW THEREFORE, in consideration of the mutual understandings and covenants set forth below, City and Special Magistrate agree as follows:

SECTION 1. SERVICES: In compliance with all terms and conditions of this Agreement, Special Magistrate shall provide those services specified in the "Scope of Services," incorporated herein as Exhibit "A." All services are to be performed on an as-needed basis and City reserves the right to cancel any Code Enforcement hearings as may be necessary by providing advanced written notice to the Special Magistrate informing of such cancellation(s). As a material inducement to the City entering into this Agreement, Special Magistrate represents and warrants that it has the qualifications and experience necessary to perform the services required by this Agreement.

SECTION 2. CHANGE IN SCOPE OF SERVICES. City and Special Magistrate may request changes that would increase, decrease, or otherwise modify the Scope of Services (Exhibit "A.") Such changes must be authorized by the City in writing and duly signed by both Parties.

SECTION 3. PAYMENT FOR BILLING AND SERVICES:

- a. In consideration of the promises and the faithful performance by the Special Magistrate of its obligations, City agrees to compensate the Special Magistrate at a rate of \$225 per hour for all services authorized and performed.
- b. Upon review and approval of the Special Magistrate's invoice, City shall in accordance with the terms set forth in the Local Government Prompt Payment Act, Chapter 218, Part VII of the Florida Statutes, pay Special Magistrate the approved invoiced amount. Payment shall be made payable to Special Magistrate's law firm, Shepard, Smith, Kohlmyer & Hand, P.A., located at 2300 Maitland Center Parkway, Suite 100, Maitland, FL 32751. Questions by City regarding payments owed should be directed to the law firm's administrator or the Special Magistrate directly. Questions by the law firm or the Special Magistrate should be direct to the City Attorney.
- c. City shall compensate Special Magistrate for the actual work hours required to perform the services pursuant to this Agreement. Actual work hours shall not include travel time associate with any public hearings or other meetings with City. However, the Special Magistrate will be guaranteed a minimum of eleven (11) hours compensation per month regardless of submitted bill that may indicate fewer hours worked. City shall render monthly payments to Special Magistrate or its law firm following receipt, review and approval of invoices. Invoices shall be itemized and include the following specifications:
 1. The name and address of the Special Magistrate or its law firm.
 2. A complete and accurate time record of services performed by Special Magistrate during the month for which the City is invoiced.
 3. A description of the services rendered in (2) above, with sufficient detail to identify the exact nature of the work performed.
 4. Such other information that may be requested from the City from time to time in order to process invoices in a timely manner.
 5. The original invoice should be sent to:

City Attorney's Office, 5th Floor
Attention: Olga Sanchez de Fuentes, Esq.
101 Church Street
Kissimmee, Florida

SECTION 4. GENERAL TERMS.

- a. City may perform or have performed an audit of the records of the Special Magistrate that are directly related to Special Magistrate's performance under this Agreement at any time during the term of this Agreement and until final close-out of all invoices.
- b. Audits may be performed at a time mutually agreeable to Special Magistrate and the City.
- c. Special Magistrate agrees to maintain any and all books, documents, papers, accounting records, and other evidence pertaining to services performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such material available at its office at all reasonable times during this Agreement period for five (5) years from the date of final payment under this Agreement for audit or inspection by City. Separate billing records shall be maintained by Special Magistrate for each service authorization.
- d. In the event any audit or inspection conducted after final payment but within the five-year record retention, reveals any overpayment by City to Special Magistrate under the terms of this Agreement, Special Magistrate shall refund such overpayment to City within thirty (30) days of notice of same by City to Special Magistrate.

SECTION 5. INSURANCE.

- a. Special Magistrate shall provide, pay for and maintain in force at all during the term of this Agreement, such insurance, including malpractice, Workers' Compensation Insurance and Professional Liability Insurance, as will provide to City the protection contained in the foregoing Indemnification Section undertaken by Special Magistrate.
- b. Such policy or policies shall be issued by a company or companies authorized to do business in the State of Florida. All policies required to be carried pursuant to this Section shall provide coverage for any and all claims based on the actions of Special Magistrate in performing services under this Agreement. Any liability policy or policies shall, as a minimum, carry limits of at least Five Hundred Thousand and No/100 Dollars (\$500,000.00).
- c. Prior to the commencement of work hereunder, Special Magistrate shall furnish to City a certificate or written statement of the above required insurance. The policy or policies evidencing required insurance shall contain an endorsement to the effect that cancellation or

any material change in the policies adversely affecting the interests of City in such insurance shall not be effective until thirty (30) days after written notice thereof to City. City reserves the right to require a copy of such policy or policies upon request.

d. The maintenance of the insurance coverage set forth herein shall not be construed to limit not have the effect of limiting Special Magistrate's liability under the provisions of the indemnification clause.

SECTION 6. TERM. This Agreement shall become effective on January 10, 2022, and shall run for a period of (1) year from that date. At the sole option of the City, the Agreement may be renewed for three (3) additional one (1) year periods. The Special Magistrate shall not serve in more than one office in violation of Article II section 5(a) of the Florida Constitution.

SECTION 7. NO CONTINGENT FEES. Special Magistrate warrants that it has not employed, or retained any company or persons, other than a bona fide employee working solely for the Special Magistrate, 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 Special Magistrate, any fee, commission, percentage, gift, or other consideration contingent upon resulting from award of making this Agreement. For the breach of violation of this provision, City shall have the right to immediately terminate this Agreement in its sole discretion, without the right to cure.

SECTION 8. CONFLICT OF INTEREST. Special Magistrate acknowledges and confirms that they have no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. Special Magistrate further acknowledges that it will neither take any action nor engage in any conduct that would cause any City employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government. In the event that Special Magistrate causes or in any way promoted or encourages a City officer, employee or agent to violate Chapter 112, Florida Statutes, City shall have the right to terminate this Agreement, in its sole discretion, without the right to cure.

SECTION 9. IDEMNIFICATION. Special Magistrate, when functioning in the judicial capacity under Section 162.03(2), Florida Statutes, is a municipal officer for purposes Article II, § 5(a), Florida Constitution. The actions taken by the Special Magistrate are entitled judicial immunity. Accordingly, with the exception of intentional torts, the City of Kissimmee shall indemnify, defend, and hold harmless the Special Magistrate from any and all suits, actions, damages, losses, claims, expenses, and costs of every name and description, including attorneys' fees and costs, arising from, resulting from or relating to the Special Magistrate's actions and/or omissions under Section 162.03(2), Florida Statutes, whether caused in whole or in part by the Special Magistrate.

Notwithstanding the above, the Parties also recognize that Special Magistrate is an independent contractor who is covered by his own professional liability policy. Accordingly, if any claim is

brought against the Special Magistrate, its law firm, its officers, employees, agents, and representatives, rising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of Special Magistrate and its law firm, its officers, employees, agents, and representatives, Special Magistrate will rely first on his own insurance coverage in defense of the matter and will only look to the City as a secondary source of indemnity where indemnity under Special Magistrate's own insurance coverage is unavailable or denied.

SECTION 10. PUBLIC RECORDS. Special Magistrate 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 Special Magistrate shall keep and maintain public records required by the City to perform the service.

If the Special Magistrate has questions regarding the application of Chapter 119, Florida Statutes, to the Special Magistrate's duty to provide public records relating to this Agreement, 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 Public Records requests records from Special Magistrate, it 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. Special Magistrate 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 Special Magistrate does not transfer the records to the City.
- c. Upon completion of this Agreement, Special Magistrate shall transfer, at no cost, to the City all public records in possession of Special Magistrate or keep and maintain public records required by the City to perform the service. If Special Magistrate transfers all public records to the City upon completion of the Agreement, Special Magistrate shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Special Magistrate keeps and maintains public records upon completion of this Agreement, Special Magistrate shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from City's Custodian of Public Records, in a format that is compatible with the information technology systems of the City. Unless otherwise directed by City, all records will be transferred at the completion of this Agreement.

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

SECTION 11. ASSIGNMENT. This Agreement and any interests herein shall not be assigned, transferred, or otherwise encumbered, under any circumstance, by the Parties hereto without prior written consent of the other Party, and in such cases only by a document of equal dignity herewith.

SECTION 12. SUBCONTRACTOR. In the event Special Magistrate during the course of the work under this Agreement, requires the services of any subcontractor or other professional associates in connection with service covered by this Agreement, Special Magistrate must secure the prior written approval of the City and if such approval is granted, Special Magistrate shall remain fully responsible for the services of subcontractor or other professional associates in performance of this Agreement.

SECTION 13. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner as creating or establishing a relationship of co-partners between the Parties or as constituting Special Magistrate (including its officers, employees, and agents), as an agent, representative or employee of City for any purposes or in any manner whatsoever. Special Magistrate is and shall remain an independent Special Magistrate with respect to all services performed under this Agreement.

SECTION 14. TERMINATION.

- a. City may, by written notice to Special Magistrate, terminate this Agreement, in whole or in part, either for City's convenience or because of the failure of the Special Magistrate to fulfill its agreement obligations. Upon receipt of such written notice, the Special Magistrate shall:
 - 1. Immediately discontinue all services to City (unless the notice directs otherwise); and
 - 2. Deliver to City all opinions, data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been

accumulated by Special Magistrate in performing this Agreement, whether completed or in process.

3. If the termination is for the convenience of City, Special Magistrate shall be paid compensation for services performed to the date of termination on the percentage of work completed. City shall not be obligated to pay for any services performed by Special Magistrate after notice of termination has been given.
4. If the termination is due to the failure of Special Magistrate to fulfill its Agreement obligations, City may take over the work and designate a replacement Special Magistrate to complete the work and may procure same by Agreement or otherwise. Special Magistrate shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond its control and/or without the fault or negligence of the Special Magistrate.
5. Special Magistrate may terminate this Agreement for convenience by providing the City with at least ninety (90) days written notice. Special Magistrate may also terminate this Agreement for non-payment of services rendered by providing City with at least thirty (30) days written notice after Special Magistrate notifies the City that payment is past due.

SECTION 15. NOTICES. Whenever either Party desires to give notice to the other, it must be given by written notice, sent by certified United States Mail, return receipt requested. Notice shall be provided to each Party, respectively, as follows:

TO CITY:

City Attorney's Office, 5th Floor
Olga Sanchez de Fuentes, Esq.
101 Church Street
Kissimmee, FL 34741

TO SPECIAL MAGISTRATE:

Clifford B. Shepard
2300 Maitland Center Parkway
Suite 100
Maitland, FL 32751

SECTION 16. ENTIRE AGREEMENT.

- a. It is understood and agreed that the entire agreement of the Parties is contained herein, and that this Agreement supersedes all oral agreements and negotiations between the Parties related to the subject matter hereof, as well as any previous agreements presently in effect between the Parties to the subject matter hereof.

- b. Any alterations, amendments, deletions, or waivers of the provisions of Agreement shall be valid only when expressed in writing and duly signed by both Parties.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date below written for execution by the City.

SPECIAL MAGISTRATE

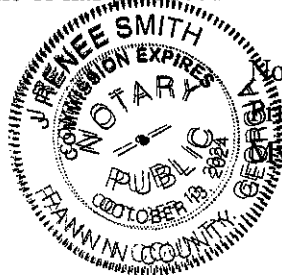
By: _____

Date: 12-14-21

STATE OF GEORGIA
COUNTY OF FANNIN

The foregoing instrument was acknowledged before me this 14 day of December, 2021, by means of ☒ physical presence or ☐ online notarization, by Clifford B. Shepard as Managing Shareholder for Shepard, Smith, Kohlmyer & Hand, P.A., a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: _____

Print Name: J. Renee Smith

Commission Expires: 10-13-24

CITY OF KISSIMMEE

By: _____

Mayor-Commissioner: Olga Gonzalez

Date: _____

ATTEST:

City Clerk

Approved as to form and legality:

City Attorney

Exhibit "A"
Scope of Services

SPECIAL MAGISTRATE'S SCOPE OF SERVICES

The scope of work to be performed by the Special Magistrate consists of but is not limited to the following:

The Special Magistrate shall provide services for the City as needed by conducting public hearings as provided within the provisions of Chapter 162, Florida Statutes, Chapter 16, Article II of the City's code of ordinances and form-based code regulations.

- 1.) The City shall designate a Clerk to the Special Magistrate and provide administrative support as may be reasonably required by the Special Magistrate for the proper performance of their duties in accordance with Section 16-27 of the City code.
- 2.) The Special Magistrate shall be an attorney who is admitted to the Florida Bar and possess experience and a working knowledge of code enforcement, zoning and land use law, building and fire code regulations, administrative law and the law of evidence.
- 3.) The Special Magistrate has jurisdiction to hear violations of all code and ordinances of City of Kissimmee with respect to non-residential properties or uses and cases involving residential properties as assigned. The Special Magistrate shall have the same status, powers, and duties as a Code Enforcement Board pursuant to Chapter 162, Florida Statutes, as amended.
- 4.) Review the Special Magistrate draft public hearing agenda for accuracy prior to its publication and if any, documents provided to the Special Magistrate related to each agenda matter.
- 5.) In administering the duties of Special Magistrate, ensure all laws related to due process, public records, and the sunshine law are adhered to, and avoid any actual or perceived conflicts.
- 6.) Timely prepare written orders for cases heard by the Special Magistrate at public hearings, ensure that the orders clearly document finding of fact and conclusions of law, and render said executed orders to the City Attorney's Office and the Clerk to the Special Magistrate for distribution to respondents.

- 7.) Handle *ex parte* matters not in a public hearing, as requested by the City Attorney or her designee from time to time, in an appropriate and fair manner.
- 8.) Maintain adequate personnel and equipment to timely and professionally administer the duties of the Special Magistrate.
- 9.) Provide the City, through the City Attorney and in a format approved by the City Attorney, monthly invoice for services rendered in accordance to the fee schedule in the agreement.
- 10.) The anticipated hours should not exceed ten (10) to twelve (12) hours per month.
- 11.) The Special Magistrate shall serve a one (1) year term. However, there is no statutory limit on the number of terms the Special Magistrate may serve as per Section 16-22 of the City code.
- 12.) The Special Magistrate shall not serve in more than one office in violation of Article II section 5(a) of the Florida Constitution.
- 13.) Provide the City, through the City Attorney and in a format approved by the City Attorney, monthly invoices for services rendered.

ITEM 7.T

APPROVAL TO SUBMIT A 2021 AFRICAN AMERICAN CULTURAL AND HISTORICAL GRANT THROUGH THE FLORIDA DIVISION OF HISTORIC RESOURCES FOR IMPROVEMENTS TO CHAMBERS PARK COMMUNITY CENTER

Request

Approval to submit a 2021 African American Cultural and Historical Grant through the Florida Division of Historic Resources for improvements to Chambers Park Community Center.

Explanation

The Florida Division of Historic Resources is providing funds through an African American Cultural and Historical Grant to assist in construction projects at facilities in Florida that highlight the contributions, culture, or history of African Americans. Priority funding is given to projects that enhance a facility named for a significant African American.

The Chambers Park Community Center, named for Cornelius Chambers, plays a large role in the daily lives of many community residents. It provides cultural and recreational programming to thousands of participants throughout the year. Mr. Chambers was a Kissimmee native and Osceola County's first African American to be killed during the Vietnam War.

The proposed improvements to the facility will not only beautify the building but also enhance its use by the public. The Public Works Facilities Division has multiple capital projects in the coming budgets to address this facility, such as roof replacement, restroom addition, interior flooring replacement and movable wall partition for more programmable space options. The City would like to apply for a \$500,000 grant which would not require a City match. The grant funding will offset the cost of these capital projects.

Recommendation

Staff recommends approval to submit a 2021 African American Cultural and Historical Grant through the Florida Division of Historic Resources for improvements to Chambers Park Community Center.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. African American Cult. & Hist Grant



African-American Cultural and Historical Grants

The purpose of this grant program is to provide funding for construction projects at facilities in Florida that highlight the contributions, culture, or history of African-Americans. Funding for this program is provided by the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, as authorized by the Department of the Treasury. Grant are required to be completed within a 24 month period.

Application Deadline:	November 30, 2021
Contribution Match:	0% up to \$500,000 50% \$500,000 to \$1,000,000
Maximum Grant Amount:	\$0 to \$1,000,000

Priority Project will meet the following:

1. Encourage the design or construction of a new facility or the renovation of an existing facility in an area with great cultural significance in which no facility exists;
2. Enhance the beauty or aesthetic value of facilities named for significant African-Americans; or
3. Restore facilities on the National Register of Historic Places.

***Grants are required to be completed within a 24 month period.**

ITEM 7.U

ACCEPTANCE OF ASSIGNMENT OF AIRPORT GROUND LEASE AGREEMENT WITH ZELIFF PROPERTIES, INC.

Request

Approval of a ground lease agreement with Zeliff Properties, Inc., for 3955 Merlin Drive at the Airport.

Explanation

Sandpiper Real Estate Holdings, LLC, is in the process of selling Hangar #2, Parcel W4 at 3955 Merlin Drive, to Zeliff Properties, Inc. Zeliff intends to utilize the hangar for vintage warbird storage, maintenance and operations. The agreement has a thirty (30) year term with one option to renew for an additional ten (10) years. The agreement adheres to a fair market value land rent in accordance with the Airport's Rates & Charges Policy and has provisions for periodic adjustments for market increases.

Recommendation

Staff recommends Commission approval of the ground lease agreement with Zeliff Properties, Inc. 3955 Merlin Drive and Parcel W4.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. Fixed Base Operator Lease Agreement Zeliff Properties, Inc. (2)

**KISSIMMEE GATEWAY AIRPORT
FIXED BASE OPERATOR'S LEASE AGREEMENT**

ZELIFF PROPERTIES, INC.

THIS LEASE AGREEMENT (the “**AGREEMENT**”) is made this ____ day of December 2021 between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, hereinafter referred to as “**Lessor**” or “**City**” and **ZELIFF PROPERTIES, INC.**, a New York Corporation, whose address is 4655 E. Saile Dr., Batavia, NY 14020 hereinafter referred to as “**Lessee**.” City and Lessee are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, City is the owner of certain improvements to real property located at 3955 Merlin Drive, Kissimmee, Florida 34741, at the Kissimmee Gateway Airport, a municipal airport of the City of Kissimmee, Florida (the “**Airport**”); and

WHEREAS, the City desires to lease to Lessee, and the Lessee is desirous, willing and able to enter into a lease from Lessor to operate a fixed base operation maintenance facility, situated on land located at 3955 Merlin Drive, Kissimmee Gateway Airport, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other able consideration, the Parties hereto agree as follows:

**PART ONE
DESCRIPTION OF LEASED PREMISES**

- A. **LEASED PREMISES.** Lessor leases to Lessee the premises (the “**Leased Premises**”) located at the Airport, more particularly described, as “Parcel W4” attached, and hereby incorporated by reference as **Exhibit A**, which consists of 62,828 square feet (1.44 acres).
- B. **CONDITION OF LEASED PREMISES.** Lessee accepts the Leased Premises and any improvements on, about, or associated with the Leased Premises “As Is, Where Is” and in their present condition. Lessee further warrants that the Leased Premises are suitable for Lessees proposed use described herein.
- C. **RE-ADJUSTMENT OF LEASED PREMISES.** This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the City and the United State of America, the State of Florida, or the County of Osceola, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or City funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to

occupy or use the Airport, or any part thereof, during time of war or national emergency.

In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, Lessee hereby consents to any and all such modifications and changes as may be reasonably required to the extent that such modifications and changes do not unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease. In the event that any such modifications or changes unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease, then Lessee shall have the option to terminate this Lease.

Notwithstanding the foregoing provisions of this Section C, in the event any such restrictions, agreements or modifications to this Lease increase the Annual Rent payable hereunder or materially and adversely affect the ability of Lessee to use the Leased Premises for the purposes permitted under this Lease, Lessee shall have the right to terminate this Lease by written notice to the City.

PART TWO TERM OF LEASE

- A. PRIMARY TERM. The term of this Lease shall be for a thirty (30) year period, with the period commencing on the first day of January 2022 and ending on the last day of December 2052.
- B. RENEWAL OPTION. Provided Lessee is not in default of the Agreement, Lessee is hereby granted an exclusive first option to renew this Agreement upon all the existing terms and conditions except for rent for one (1) additional term of ten (10) years. This option shall be exercised by written notice to the City not less than one hundred twenty (120) days prior to expiration of the existing term. Upon receipt of the extension options the parties shall negotiate the rent for the renewal period based on an appraisal as set forth in Part Three, paragraph B.
- C. HOLDING OVER. In the event Lessee shall continue to occupy the Leased Premises beyond the term of this Agreement after Lessor gives written notice to vacate, such holding over shall not constitute a renewal of this Agreement but shall be a tenancy of sufferance only. The amount of rent to be paid by Lessee during this hold over period shall equal two (2) times the normal monthly rent as stated in this agreement or the maximum amount allowed by law, whichever is greater.

PART THREE RENT

- A. RENT. The initial net rent under this Lease for the Leased Premises is **\$16,963.56** per year, payable monthly ("Annual Rent") plus sales tax and any other applicable tax including property tax. The following sum shall be payable monthly, in advance, in the amount of **\$1,413.63** ("Monthly Rent") plus said taxes. Payment of rent will commence on

January 1, 2022.

Monthly Rent will be due on the first day of every month ("Due Date") and shall be deemed delinquent if not received by the Lessor on or before the tenth day of every month. The initial net Annual Rent and Monthly Rent shall be subject to adjustment as enumerated in Part Three of this Lease.

- B. RENT ADJUSTMENTS. Lessor and Lessee recognize and agree that the purchasing power of the United States Dollar is evidenced by the Consumer Price Index – Urban Wage Earners and Clerical Workers ("Price Index") as published by the United States Department of Labor's Bureau of Labor Statistics. Lessor and Lessee also recognize that local market trends in the Central Florida and the Kissimmee area evolve over time and greatly influence the current market values of leaseholds located at the Kissimmee Gateway Airport.

The parties agree that beginning three (3) years from the Effective Date and every year thereafter, with the exception of every fifth (5th) year as set forth below, ("CPI Adjustment Year"), the parties hereto will compare the price index for said year with the price index for 2022 and the Annual Rent payments shall be recalculated and increased in the same proportion as said price index has increased in the same proportion as said price index has increased when compared with the price index for January, 2022, but shall never decrease.

Notwithstanding the above, beginning five (5) years from the Effective Date and every fifth year thereafter ("Appraisal Year") the City may obtain an appraisal of the Leased Premises from a MAI certified appraiser to establish the then Fair Market Value, as defined below, of the Leased Premises. If the City deems an appraisal is appropriate due to market conditions, the City shall notify the Lessee of their intention to invoke the right of obtaining an appraisal, sixty days prior to seeking the appraisal. Such determination shall be at the sole discretion of the City. On each Appraisal Year, in lieu of the CPI Adjustment, the Annual Rent shall increase, to the Fair Market Value, as determined by the appraisal. The Fair Market Value of the Leased Premises (but excluding Lessee improvements constructed after the Effective Date) shall be determined by appraisal where the appraiser determines the market supported rental rate per square foot of Leased Premises and improvements thereon, taking into account the land and all improvements thereon within thirty (30) days of the date on which an adjustment to Annual Rent becomes effective and shall be based on the value of comparable property in the Orlando Metropolitan area, and shall not be restricted to the consideration of properties located at the Airport (the "Fair Market Value"). The City shall select a qualified appraiser ("Appraiser") and notify Lessee of such selection, and the Appraiser shall proceed to determine the then Fair Market Value and shall provide Lessee and City with a copy of such appraisal.

The City shall pay the fees and expenses of each appraiser appointed by such party. Any appraiser designated to serve in accordance with the provisions of this Agreement shall be designated as an "MAI" appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise commercial real estate, shall be disinterested and shall have been actively engaged in the appraisal of real estate for a period of not less than five (5) years immediately preceding his appointment.

- C. RENT CAPS. In no event, however, shall the Rent Adjustment be more than ten percent (10%) for a rent adjustment.
- D. PAYMENT OF SALES TAX. Lessee shall be liable at its sole cost and expense, and the City shall have no liability for, any sales, use or similar taxes with respect to all rent and other payments made by Lessee in accordance with the provisions of this Agreement. Lessee shall indemnify, defend, and hold City completely harmless from and against any liability, including any interest and penalties, which might arise in connection with any such taxes.

PART FOUR PAYMENTS

- A. TIME AND PLACE OF PAYMENT. All payments of rents, fee, taxes, and other charges are to be made at the Kissimmee Gateway Airport, City of Kissimmee, 401 Dyer Blvd, Kissimmee, FL 34741, or such other place Lessor may direct Lessee in writing.
- B. DELINQUENT PAYMENT OF RENT AND FEES. If rent or fees are not timely paid, then the Lessee shall pay to Lessor a penalty of 5% of the amount due commencing sixteen (16) days after the DUE DATE. Lessor shall charge no penalty upon that portion of any debt that, in good faith, is in dispute or charge a penalty that exceeds the then amount permitted under Florida law. All late fees are to be paid to Lessor within 30 days of the initial date of accrual.

PART FIVE PRIVILEGES

- A. USE. The Leased Premises shall be used solely for the following Fixed Base Operator Activities as defined in the Minimum Aeronautical Service Standards for Aeronautical Tenants at the Kissimmee Gateway Airport as amended from time to time and incorporated by reference into this Lease:

Category "D" – Airframe and Power Plant Repair

Category "E" – Avionics, Instrument and/or Propeller Repair Service

Category "G" – Vintage Aircraft Operations, Restoration, and Museum Activities

The Leased Premises may be used for private/special events, offices, storage and used ancillary to Lessee's business provided they are not disruptive to airport operations and coordinated with the Director of Aviation ("**Director**"). The Leased Premises may not be used for any other purposes unless approved in writing by the Lessor.

- B. PROHIBITED USES. The Lessee shall not use or permit the use of the Leased Premises or any part thereof for any purpose or purposes other than those set forth in PART FIVE (A) above, unless approved in writing by the Lessor such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall not commit or suffer to be committed any waste in or upon the Leased Premises or maintain any public or private nuisance, nor,

without limiting the generality of the foregoing, shall the Lessee use or permit the use of the Leased Premises for any illegal, improper, immoral, or unlawful purposes.

- C. INGRESS AND EGRESS. Lessee shall have at all times the full and free right of ingress and egress. Such right also extends to persons or organizations supplying materials or furnishing services to Lessee, as well as employees, customers, guest, and other invitees, who include vehicles, machinery, and equipment reasonably required by such persons or organizations.

PART SIX OBLIGATIONS OF AGREEMENT

- A. NET LEASE. The use and occupancy of the Leased Premises by Lessee shall be without cost or expense to Lessor. This Agreement shall be without cost to the City except for the City's obligations set forth or specifically provided elsewhere herein. The Lessee accepts the Leased Premises in its "As Is, Where Is" condition except with regards to items or duties which are expressly agreed to and set forth in writing by Lessor. Lessee shall keep and maintain the Leased Premises as set forth in PART SIX (B), pay all taxes in accordance with PART THREE, pay all casualty, liability and other insurance premiums as set forth in PART SIX (J), and satisfy all of its other obligations under this Agreement.
- B. MAINTENANCE BY LESSEE. Lessee shall be responsible for the following maintenance and repair to the Leased Premises:
1. All upkeep, repair, and maintenance of the Leased Premises including but not limited to interior walls, doors, locks, windows, flooring, fixtures, ceilings, roofs, lighting, electrical and plumbing systems, all heating, air conditioning and heating, fire monitoring and suppression systems.
 2. Lessee's responsibilities under this section shall also include all other internal, external, and supporting structures and equipment;
 3. Upon occupation of the Leased Premises, maintain current landscaping in the area of the Leased Premises, Exhibit A.
 4. Lessee will not store or dispose of any debris or waste materials on Airport property, except by means of waste receptacles or containers authorized by Lessor;
 5. Lessee shall comply with all federal, state, and local fire codes and regulations. Lessee shall also provide and maintain hand-operated fire extinguishers for the interior of the building in accordance with applicable safety codes;
 6. Lessee will comply in all aspects with the City of Kissimmee Code including all planning, zoning, and building codes, regulations, and ordinances. Lessor warrants that the intended use is compliant as to the City's land use and zoning codes.

7. Lessor retains the right to, reasonably in both time and scope, upon written notice to Lessee, require Lessee to undertake maintenance on the Leased Premises. Lessor shall be the sole judge of the due maintenance undertaken by the Lessee and may upon written notice require reasonable specific maintenance work to be completed by Lessee. If such reasonable maintenance is not completed within a reasonable time period, the Lessor shall have the right to perform such reasonable maintenance, and Lessee shall reimburse Lessor for the cost of such reasonable maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with PART FOUR above.
8. Lessee agrees that upon the expiration of the term of this Agreement or sooner termination thereof, the Leased Premises shall be delivered to Lessor in the same condition as when the Lessee obtained possession, and reasonable wear and tear. Lessor reserves the right to enter and make periodic inspections of the Leased Premises and improvements thereon during normal business hours. Lessor reserves the right to enter the Leased Premises during such times as necessitated by an emergency or in order to prevent the occurrence of waste to the Leased Premises and its fixtures.

C. CONSTRUCTION, ALTERATIONS, REPAIRS.

1. Lessee shall not erect any structures, make any improvements or modifications, or undertake any other construction on the Leased Premises, except as previously set forth, nor shall Lessee alter, modify or make additions, improvements, or repairs to or replace any structure which is existing or built, or install any fixtures other than trade fixtures which are removable without causing permanent injury to the Leased Premises without prior written approval of the Lessor, such approval not to be unreasonably withhold, conditioned or delayed.
2. Development and construction will only be permitted in accordance with the guidelines presented in the approved Airport Master Plan. Before commencement of any improvements or modifications to the Leased Premises, the Lessee shall submit a written construction application to the Director, and if the Director requests, the construction application shall be in the form as set forth below. The plans for the proposed improvements or modifications to the Leased Premises shall completely describe the function and design and shall also contain the following: upon request,
 - a. A graphic presentation of the improvements showing exact locations of access and egress to and from the Leased Premises, facilities included and interior layouts and plans.
 - b. A basic illustration of the décor of the Leased Premises including construction, furnishings and equipment.

- c. Request for approval of above.
 - d. A schedule for completion of each phase of the improvements.
- 3. Lessor shall attempt to make a timely disposition of each Lessee Construction Application and will not arbitrarily or capriciously withhold or condition approval of the same.
- 4. Upon approval, the Lessee shall proceed with the construction, with reasonable diligence and at its sole cost and expense.
- 5. Where such alterations or construction has been made, Lessee shall, within (30) days following completion of the alterations, present to Lessor a complete set of "as-built" drawings including, without limitation, plumbing and electrical systems.
- D. UTILITIES. Lessee shall be solely responsible for and pay all charges for utilities for the Leased Premises, including but not limited to all charges pertaining to providing water, sewer, gas, electricity, telephone and internet service. Lessee shall pay utility charges within thirty (30) days of receiving the invoice for said utilities. Lessee will pay all costs of Storm Water fees associated with the paved aircraft parking area. Lessee will pay a proportional cost of any future fees enacted to cover the cost of utility services.
- E. TRASH AND GARBAGE REMOVAL. Lessee shall maintain the Leased Premises, improvements, and fixtures at all times in a safe, neat, and aesthetically pleasing condition. Lessee shall not permit the accumulation of any trash, ashes, or debris on the Leased Premises and shall remove such debris to a disposal site off the Airport property. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused from its operation. Lessee shall provide and use suitable – covered metal receptacles in an area acknowledged by Lessor for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.
- F. SIGNS. No signs, billboards, flyers shall be erected or maintained by Lessee except according to the Lessor's requirements for location and use of signs on Airport property. Before erection of any sign, billboard or flyer on city property, Lessee must obtain any applicable permits required by the City.
- G. NONDISCRIMINATION. **Exhibit B**, relating to FAA required non-discrimination provisions, is incorporated herein by this reference.
- H. HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY LESSEE. Lessee shall handle, use, store, and dispose of hazardous materials, fuel petroleum products, and all other materials, whether hazardous or not, owned or used by Lessee, its agents, contractors, assigns, guests, invitees, or any other person or firm in privity with Lessee on the Airport in accordance with all applicable

federal, state, local laws which include but are not limited to Lessor's regulations, rules, and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, the Lessee shall be responsible for the clean-up, containment and otherwise abatement of such contamination at Lessee's sole cost and expense. Further, Lessee shall notify the Lessor and all other appropriate government agencies of such an occurrence immediately after said incidence. Should the Lessee fail to comply with any term contained in this section, the Lessor may take any reasonable and appropriate action in the place of Lessee. The Lessee shall promptly pay the full cost of such remedial action incurred by the Lessor due to noncompliance under this section.

I. NO LIENS.

1. Lessee shall keep the Leased Premises free from all liens, including, but not limited to, mechanics liens arising from any alteration or construction work performed or labor or materials supplied to the Leased Premises. Any construction work on the Leased Premises authorized by the Lessee shall be performed pursuant to a "no-lien" contract and Lessee shall make certain that the Florida Statutes relating to the "no-lien" contracts are complied with in every particular detail.
2. If, at any time, Lessee shall cause any mechanic's, laborers, or material man's lien to be filed against the Leased Premises or any part thereof, Lessee shall cause the same to be discharged either by record, by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If Lessee fails to cause such liens to be discharged by payment or through appropriate bond within thirty (30) days from the date said lien is filed, then such failure should be deemed a default in the performance of this Agreement.
3. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or material man for any specific improvement, alteration to or repair of the Leased Premises, or any part of the Leased Premises.

J. INDEMNITY AND INSURANCE BY LESSEE.

1. Indemnification. Lessee further covenants and agrees to indemnify and hold the City, its members, officers, employees, and agents of each, forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from Lessee's use, occupancy, operation, or maintenance of the Leased Premises, including the work, acts, or omissions of Lessee's officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the City's

negligence. The City will refer to Lessee promptly upon notice thereof, any claim made or suit instituted against the City which, in any way, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Lease Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended).

2. Insurance. Lessee shall procure and maintain in effect, at their own expense, for the term of this Agreement, Workers Compensation Insurance as required by Florida Statutes, or adequate Employee's Liability Insurance; Public Liability Insurance; and Property Damage Insurance covering all of Lessee's activities and the Leased Premises at the Airport. Lessee agrees to maintain general liability insurance coverage of \$1,000,000 for each occurrence and over \$2,000,000 general aggregate, as well as the required Auto insurance.

The Lessee shall maintain such insurance underwriters authorized to do business in the State of Florida satisfactory to the Lessor. Coverage is to be written on the broadest liability form including but not limited to products liability, blanket contractual, and independent contractors. All policies shall include the City of Kissimmee as an additional insured as its interests appear. Lessee shall furnish Lessor with a Certificate of Insurance from the Lessee's carrier indicating that there is such insurance coverage as hereinbefore provided, and if requested by the Lessor, shall submit to the Lessor, a true copy of the above insurance coverage. Said Certificate of Insurance shall provide that the policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice by registered or certified mail to the Lessor. The dollar amount of liability insurance coverage shall be reviewed on a periodic basis and modified, if necessary, based upon escalating costs and limits for the uses as provided in this Agreement as compared to similar airports.

- K. COMPLIANCE WITH LAW, RULES AND REGULATIONS. Lessee shall, at its sole expense, observe and comply with the ordinances, statutes, rules, and regulations of all governmental authorities including Lessor which are applicable to the conduct of Lessee's business and in addition, those rules, and regulations of the Lessor not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of the Lessee's breach of any terms or covenants contained within this Agreement shall be borne by Lessee. Lessee will ensure the integrity of the Airport perimeter security at all times. This includes ensuring all gates, to include pedestrian gates, remain locked at all times unless

monitored by an employee of the Lessee. Personnel vehicles of Lessee's employees, customers or contractors will not be parked on the airside.

L. RENOVATIONS.

1. All proposed renovation, refurbishing, alterations, remodeling, and construction shall be reviewed and approved by the Director and may also have to be reviewed and approved by the City Building Official, to include obtaining a Building Permit from the City.
2. The parties agree that all renovations, refurbishments, improvements, additions, fixtures, and alterations to Leased Premises shall be deemed to be attached to the freehold and shall become property of the Lessor to the extent as if the Leased Premises and its renovations, refurbishments, improvements, additions, fixtures, and alterations had been erected and installed on the Leased Premises prior to the execution of this Agreement.
3. Lessee expressly assumes full responsibility for all damages and injuries that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, alteration, renovation, refurbishment, improvement, or maintenance of any building, pursuant to or under this Agreement, and shall indemnify Lessor against any and all claims arising from such actions.

**PART SEVEN
OBLIGATIONS OF LESSOR**

- A. OPERATION AS A PUBLIC AIRPORT. Lessor covenants and agrees that at all times it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.
- B. ENTRY AND INSPECTION. Lessor shall have the right to enter upon and inspect the Leased Premises at any reasonable time, with twenty-four (24) hours' notice during the term hereof for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The Lessor shall not, during the course of any such inspection, unreasonably interfere with the Lessee's use and enjoyment of the Leased Premises.

**PART EIGHT
DAMAGE OR DESTRUCTION OF LEASED PREMISES**

If the Leased Premises shall be partially damaged by fire, flood, lightning, windstorm, or other force of the elements or by the public enemy or from any cause not caused by the Lessee or Lessee's agents, assigns, contractors, guests, or invitees, so as to adversely affect the Lessee's use of its exclusive space therein even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the Lessee at its own cost and expense. If damage

caused shall be so extensive as to render the Lessee's exclusive space untenable, but nevertheless capable of being repaired and made tenantable within a period of sixty (60) days, the Lessee shall repair the damage at its own cost and expense. The rent payable shall be proportionately paid up to the time of such damage but shall thenceforth cease until such time as such building and space shall be restored. If the Leased Premises are completely destroyed or so damaged that it will and does remain untenable for a period of more than sixty (60) days, Lessee shall have the right to terminate this Agreement upon written notice to Lessor within sixty (60) days from the date of such damage or destruction. Nothing in this Article shall apply to damages to the Leased Premises caused by the acts of the Lessee, and Lessee shall, at its own cost and expense, promptly repair with due diligence all such damages resulting from its act of said character. Lessee shall not be obligated to expend more on repair or restoration than the amount of any insurance proceeds received by Lessee.

PART NINE

TERMINATION OF AGREEMENT, ASSIGNMENT, AND TRANSFERS

- A. **TERMINATION.** This Agreement shall terminate without action by either party at the end of the initial term or any renewal term.
- B. **TERMINATION BY LESSEE.** Lessee may terminate this Agreement after:
 - 1. Material default by Lessor in the performance of a covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of sixty (60) days after receipt of written notice of default from Lessee. Unless Lessor is diligently attempting to remedy such default in which case Lessor shall be allowed such reasonable time as may be required.
 - 2. Upon Lessee giving ninety (90) days written notice to the Lessor pursuant to PART ELEVEN (G) of this Agreement and immediately upon or after the occurrence of either of the following events:
 - a. The failure or refusal of the Federal Aviation Administration (FAA) to permit the Lessee to operate into, from, or through the Kissimmee Gateway Airport
 - b. The duly enactment and implementation of a City, State, or Federal law, order, rule or regulation which is directly binding on the Leased Premises and the operation of the Lessee which directly results in the inability of the Lessee to use the Leased Premises for a period longer than one hundred eighty days (180) days during which time rent will abate.
- C. **EXERCISING LESSEE'S RIGHTS OF TERMINATION.** Lessee may exercise such right of termination by written notice to Lessor at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the Lessor.
- D. **TERMINATION BY LESSOR.** Lessor may terminate this Agreement in the event Lessee

shall:

1. Be in arrears in the payment of the whole or any part of the rent or other fees, payments, or sums due for a period of sixty (60) days after written notice and the time such payments become due;
2. Make a general assignment for the benefit of creditors;
3. File a voluntary or involuntary petition in bankruptcy;
4. Abandon the Leased Premises;
5. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor of said default, unless Lessor is diligently attempting to remedy such default in which case Lessor shall be allowed such reasonable time as may be required;
6. Appoint or to cause the appointment of a receiver for Lessee;
7. Violate local, state, federal, or Lessor's laws, statutes, ordinances, rules, and regulations not inconsistent with the provisions of this Agreement and such default continues for a period of sixty (60) days after receipt of written notice from Lessor of said default.

E. WAIVER OF STATUTORY NOTICE TO QUIT. In the event Lessor exercises its option to terminate this Agreement upon the happening of any of the events set forth in Section D of this Article, Termination by Lessor, a notice of termination shall be sufficient to terminate this agreement. Upon such termination, Lessee agrees that it will forthwith surrender possession of the Leased Premises to Lessor. Lessor will be given access to leased premises to remove its property following termination.

F. SUBLETTING AND ASSIGNMENT. Lessee may not rent or sublease the Leased Premises without the prior written consent of the Lessor consent which shall not be withheld, conditioned or delayed. Lessee may, with the prior written consent of Lessor, assign this Agreement; in such event, Lessee shall remain liable to Lessor for the remainder of the term of the Agreement to pay to Lessor any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the Lessor, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

PART TEN RIGHTS UPON TERMINATION

A. LEASED PREMISES. It is the intent of this Agreement that the Leased Premises shall be

and remain the property of Lessor during the entire term of this Agreement and thereafter.

- B. REMOVAL OF PERSONAL PROPERTY. Upon the expiration or termination of this Agreement, all buildings, improvements, and fixtures constructed or placed upon Leased Premises shall revert, free and clear of any mortgage or lien, to Lessor. At the termination of this Agreement for any reason, after payment of all rents and charges, Lessee shall have the right, within thirty (30) days thereafter to remove any of its office supplies, goods, furniture, machinery, equipment, and signs installed on the Lease Premises by Lessee, but shall repair at its own expense all damage caused by such removal. Any such personal property not removed by Lessee within such time shall become the property of the Lessor.
- C. LANDLORD LIEN. If the Lessee has not fully paid all the rents and charges pursuant to this Agreement, then the Lessor shall be entitled to a landlord lien for the purpose of securing the payment of all rents and charges. Lessor shall have the right to seize, hold, and liquidate such personal property possessed or owned by Lessee to satisfy any obligations of the Lessee and the costs incurred to perfect this landlord lien. Any excess funds from this liquidation shall be turned over to the Lessee.

PART ELEVEN GENERAL PROVISIONS

- A. LESSOR'S RESERVED RIGHTS.
1. City reserves the right: (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, and provided that City shall use reasonable efforts to preserve Lessee's rights hereunder, City shall be free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned by the making of such improvements, repairs, alterations and additions, unless such loss or damages are caused by the negligence or willful misconduct of the City, (ii) to establish such fees and charges for the use of the Airport by Lessee (excluding any additional charge for the use of the Leased Premises) and all others similarly situated from time to time as City may deem advisable, and (iii) for itself and others to utilize and maintain any utility and drainage easements located on the Leased Premises, and (iv) to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Leased Premises and to grant necessary utility easements therefore, provided that in the exercise of such rights, Lessee's use of the Leased Premises and any Improvements shall not be unreasonably impaired and any damage to the Leased Premises or any Improvements caused by City as a result thereof shall be repaired without cost to Lessee.
 2. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the terms relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be reimbursement to Lessor for federal funds for the development of the Airport.

- B. NON-INTERFERENCE WITH OPERATION OF AIRPORT. Lessee by accepting this Agreement expressly agrees for itself and its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event this covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the reasonable expense of Lessee.

Lessor shall maintain and keep in repair the landing area of the Airport and shall have the right to direct and control all activities of the Lessee in this regard.

- C. NONEXCLUSIVE RIGHT.

The Lessee expressly agrees on behalf of itself and its successors and assigns that to the extent it has any rights under this Agreement to conduct any activity on the Airport property, such rights are nonexclusive and City has reserved the right to grant similar rights to others at the Airport. The provisions of this subsection shall not confer any rights on Lessee which have not been expressly granted to Lessee elsewhere in this Agreement.

- D. WAIVER OF JURY TRIAL, VENUE. It is mutually agreed by and between Lessee and Lessor 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. Venue of all actions shall be Osceola County, Florida.

- E. TAXES, LICENSES, AND PERMITS. Lessee shall pay all personal property taxes which may be assessed against merchandise, or other personal property belonging to the Lessee located on the Leased Premises, or other permitted portions of the Airport. In the event any real estate taxes are assessed against the land or improvements on the Leased Premises during the term of this Agreement, such taxes shall be paid by Lessee. Lessee shall obtain and pay for all license, permits, fees, or other authorization or charges as required under federal, state, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

- F. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

- G. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted, such notice shall be served by Certified or Registered Mail with return receipt, addressed to the Lessor in following manner:

Director of Aviation
Kissimmee Gateway Airport
401 Dyer Boulevard,
Kissimmee, FL 324741-4613

and notices, consents and approvals to addressed to Lessee in the following manner:

Zeliff Properties, Inc.
4655 E. Saile Dr.
Batavia, NY 14020

or such other addresses as the parties may designate to each other in writing.

- H. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- I. SUCCESSORS AND ASSIGNS. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- J. AMERICANS WITH DISABILITIES ACT. As used herein, "ADA" shall mean the Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), as amended from time to time, and the regulations promulgated thereunder. Lessee shall be responsible for any actions required to comply with ADA (including, without limitation, any actions required by the City to enable the City to meet its ADA obligations with respect to Lessee's operations) as a result of (i) any Improvements or modifications which it makes to the Leased Premises, (ii) its particular use of the Leased Premises and (iii) any changes to the ADA after the Effective Date. Any modification to the Leased Premises, which Lessee is required to make under this Section, shall be performed to the satisfaction of the City. In the event the Lessee shall fail to construct or modify any Improvements to the Leased Premises as required under this Section, the City shall have the right to enter the Leased Premises and perform such modifications on the Lessee's behalf, without liability for any disruption to the Lessee's activities therein during the completion of or as a result of such modifications, and the cost of such modifications shall be invoiced to the Lessee and shall be promptly paid by the Lessee to the City as additional Rent hereunder.
- K. ATTORNEY FEE PROVISION. In the event that any proceeding at law or in equity arises hereunder or in connection herewith (including any appellate proceeding or bankruptcy proceeding) the prevailing party shall be awarded costs, reasonable expert fees and reasonable Attorney's Fees incurred in connection therewith.
- L. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- M. PUBLIC ENTITIES CRIME NOTICE. The Lessee acknowledges the following notice:

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 \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.

- N. BROKER LANGUAGE. City and Lessee represent and warrant to each other that they have dealt with no broker in connection with this Agreement and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.
- O. ESTOPPEL PROVISION. At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to the best of the responding party's knowledge, the requesting party is not in default under this Agreement (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Agreement and the relationship between City and Lessee as may reasonably be requested. In addition, at the City's request, Lessee shall promptly execute and return to City a short form memorandum of this Agreement which may be recorded in the public records of Osceola County, Florida in City's sole discretion.
- P. ENGINE RUNUPS. Except to the extent that noise restrictions of any governmental City having jurisdiction thereover may preclude or limit the same, Lessee shall have the right to conduct engine runups at the Leased Premises, and/or the nonexclusive right in common with others, to conduct engine runups on the Airport at such location or locations as City may designate from time to time for such purposes, in reasonable proximity to the Leased Premises on the Airport, and subject to the reasonable rules and regulations of City.
- Q. EFFECTIVE DATE. The Effective Date shall mean the date that the last party fully executes this Agreement.

PART TWELVE ENVIRONMENTAL MATTERS

- A. STORAGE TANKS.
 - 1. Lessee agrees to comply with all applicable federal, state, and local government regulations regarding above and underground storage tanks effective on the date of execution of this Agreement and as hereafter may be enacted or amended. Specifically, Lessee agrees that all regulated above or underground storage tanks owned or operated by it and located on the Leased Premises or which might discharge on or under the Leased Premises, shall be registered with the appropriated federal, stated, and local authorities; shall be constructed of approved materials; shall, if existing, be appropriately retrofitted pursuant to current federal,

state, and local requirements; shall have an approved method of leak detection; and shall be made available for compliance inspection at all times during normal business hours. ("Approved" for purposes of this provision shall mean: "determined to meet applicable federal and state environmental regulatory requirements.") Further, Lessee agrees to properly record, maintain, and reconcile all inventory record required by appropriate federal, state, and local regulations and to make such records available for inspection at the Leased Premises at all times during normal business hours.

2. Lessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. 280 by obtaining at least one million dollars (\$1,000,000.00) of third-party liability insurance and one million dollars (\$1,000,000.00) of restoration (cleanup) insurance as coverage for all petroleum storage tank activities conducted by Lessee on or adjacent to the Leased Premises. Such insurance must be maintained in effect during the entirety of the term of this Agreement and proof of such insurance must be provided to Lessor prior to the operation or installation of any regulated above or underground petroleum storage tanks on or about the Leased Premises. This insurance requirement may be satisfied by qualification for and compliance with the Florida Petroleum Liability Insurance and Restoration Program as established by Section 376.3072, Florida Statutes.

- B. INDEMNIFICATION. Lessee agrees to indemnify and hold the City, and the members, officers, employees and agents of each, harmless from and against all liabilities, claims, judgment, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from Lessee's use, occupancy, operation or maintenance of the Leased Premises, including the work, acts, or omissions of its officers, agents, employees, contractors, subcontractors, operators, and sub-lessees, except to the extent caused by the City's negligence or by the joint negligence of the City and any person other than Lessee, its officers, agents, employee, contractors, subcontractors, operators, or sub-lessees. City will refer to Lessee, promptly upon notice thereof, any claim made, or suit instituted against it, which, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by the Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount.

- C. HAZARDOUS MATERIALS COVENANTS.

1. Lessee hereby represents and warrants to and for the benefit of the disposal of any Hazardous Materials (hereinafter defined) upon the Leased Premises or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). From purposes hereof the term "Hazardous Materials" shall mean and

refer to (i) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. *6901 et seq.), as amended from time to time, and regulations promulgated thereunder, (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 24, *6901, et seq.) (“CERCLA”), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the Leased Premises is prohibited by the City that the Leased Premises will not use or operated in any manner that will result in the storage use treatment, manufacture, or any applicable environmental laws or regulations (“Laws”) or by any other legal requirements affecting the Leased Premises; (viii) petroleum-based materials (with the exception of tires affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any laws or by any other legal requirements affecting the Leased Premises. The term “Hazardous Materials Contamination” shall mean and refer to the contamination of the Leased Premises, soil, surface water, ground water, air, or other elements on or off the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Leased Premises.

2. In addition to and without limiting the generality of any other provisions of this Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any damages, expenses, fees, claims, demands, causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys’ fees and costs of litigation, and costs and expenses of response, remedial, and corrective work and other cleanup activities, arising out of or in any manner connected with (i) the “release” or “threatened release” (as those term are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Lessee or Lessee’s employees, agents, delegates, invitees, licensees, concessionaires, contractors, or representatives, of any Hazardous materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises caused solely by Lessee. The provisions of this Section shall survive any acquisition of the Leased Premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, liabilities, and all losses.
3. Lessor shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists prior to the date of this Agreement. The Parties hereby acknowledge that City shall conduct a Phase I report of the Leased Premises, prior to the construction of any improvements by the Lessee. The Lessee shall not be obligated to take possession of the property, until completion of the Phase I, and any remediation work identified by this report or a Phase II report has been completed by Lessor. The Phase I conducted shall act as the “Baseline” to establish the environmental condition of the Leased Premises at the time of the commencement of possession by Lessee.

4. Within thirty (30) days of the expiration of this Agreement, Lessor shall prepare an environmental report equivalent to Phase I and Phase II, to include borings to establish the environmental condition of the Leased Premises as of expiration of the Agreement. In the event it is determined during the Agreement or at the expiration of this Agreement, that the Leased Premises contains pollutants in amounts which violate any applicable Federal, State or local governmental standards, Lessee shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists after the Baseline. To the extent permitted by applicable law, Lessee shall indemnify defend and hold the City completely harmless from and against any and all liabilities (including, but not limited to, liability under CERCLA and any other environmental statute, law, ordinance, regulation, rule or order), losses, suits, claims, demands, judgments, fines, damages, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to court costs, reasonable expert fees and reasonable Attorneys' Fees) with respect to any hazardous substances existing at the Leased Premises prior to expiration of the Agreement.

Signature page to follow



IN WITNESS THEREOF, the parties now sign, agree to, and enter into this Agreement on the day and year first above written.

ZELIFF PROPERTIES, INC.



Peter Zeliff

State of Florida)
County of Osceola)

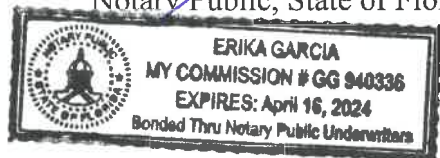
The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☒ online notarization on this 19th day of December, 2021, by Peter Zeliff, of **Zeliff Properties Inc.**, a corporation organized under the laws of the State of ~~Florida~~, who is ☒ personally known to me or ☐ who has produced _____ as identification, and acknowledged before me that they executed the foregoing instrument as such officer in the name and on behalf of the corporation.

PH2
NY

Seal:



Notary Public, State of Florida



CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Mayor-Commissioner

ATTEST:

City Clerk

Approved as to form and legality

City Attorney

Exhibit "A"
[Leased Premises Exhibit"]

Exhibit “B”
FAA Required Contract Provisions
GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”), agrees as follows, if and to the extent applicable as a matter of law:

Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Lesseees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-Lessee or supplier will be notified by the Lessee of the Lessee’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: If and to the extent applicable as a matter of law, the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-Lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, the Aviation City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.
2. In the event of breach of any of the above nondiscrimination covenants, the Aviation City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law, such may be amended from time to time upon thirty (30) days' advanced written notice to Lessee:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (Prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975

and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

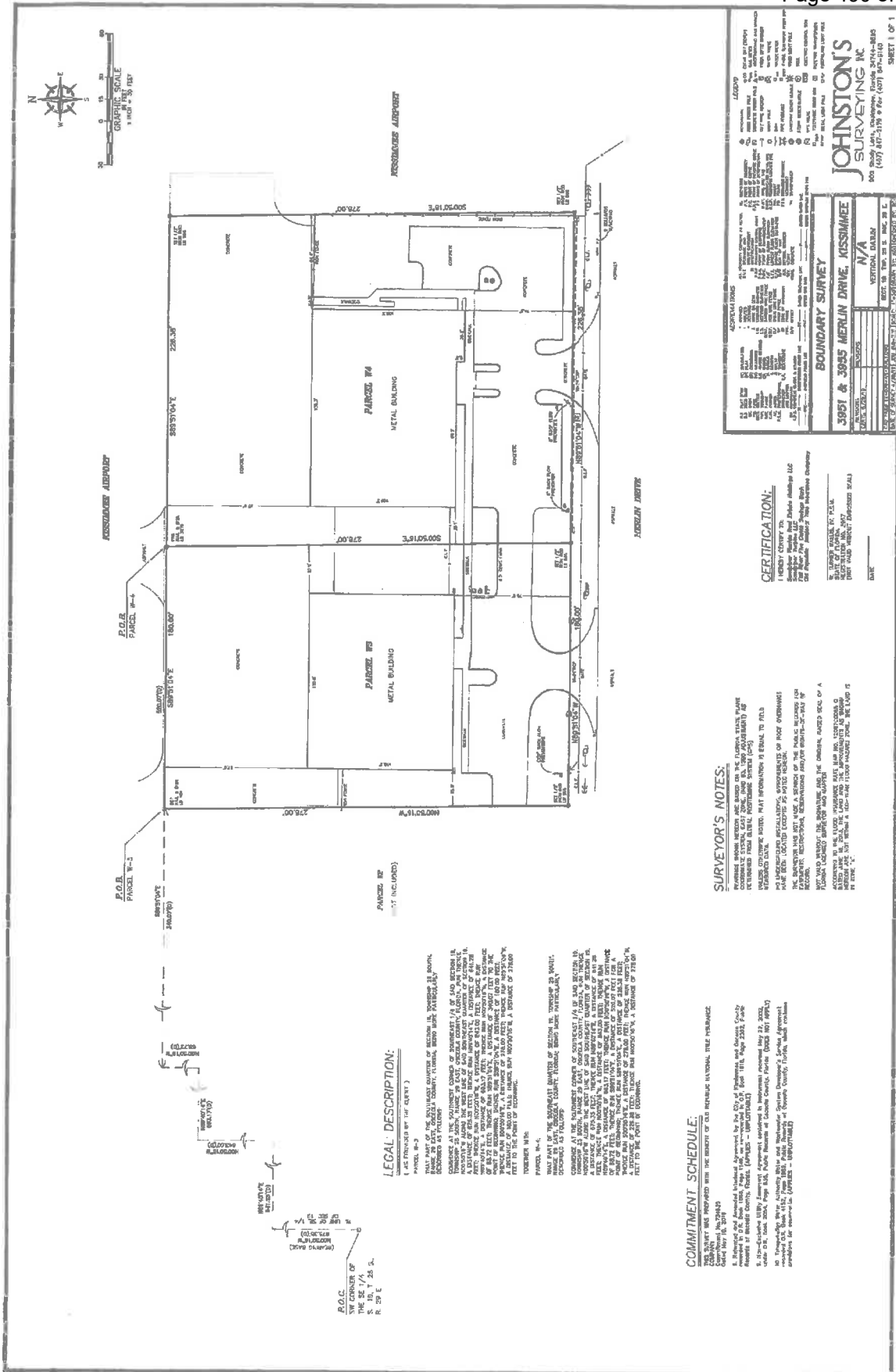
Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).



PARCEL W-3:

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SOUTHEAST 1/4 OF SAID SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, RUN THENCE N00°50'16"W ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 19, A DISTANCE OF 675.35 FEET; THENCE RUN N89°40'14"E, A DISTANCE OF 641.28 FEET; THENCE RUN N00°50'16"W, A DISTANCE OF 843.00 FEET; THENCE RUN N89°40'14"E, A DISTANCE OF 693.17 FEET; THENCE RUN N00°50'16"W, A DISTANCE OF 68.72 FEET; THENCE RUN S89°51'04"E, A DISTANCE OF 340.07 FEET TO THE POINT OF BEGINNING; THENCE RUN S89°51'04"E, A DISTANCE OF 180.00 FEET; THENCE RUN S00°50'16"E, A DISTANCE OF 278.00 FEET; THENCE RUN N89°51'04"W, A DISTANCE OF 180.00 FEET; THENCE RUN N00°50'16"W, A DISTANCE OF 278.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

PARCEL W-4:

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SOUTHEAST 1/4 OF SAID SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, RUN THENCE N00°50'16"W ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 19, A DISTANCE OF 675.35 FEET; THENCE RUN N89°40'14"E, A DISTANCE OF 641.28 FEET; THENCE RUN N00°50'16"W, A DISTANCE OF 843.00 FEET; THENCE RUN N89°40'14"E, A DISTANCE OF 693.17 FEET; THENCE RUN N00°50'16"W, A DISTANCE OF 68.72 FEET; THENCE RUN S89°51'04"E, A DISTANCE OF 520.07 FEET FOR A POINT OF BEGINNING; THENCE RUN S89°51'04"E, A DISTANCE OF 226.38 FEET; THENCE RUN S00°50'16"E, A DISTANCE OF 278.00 FEET; THENCE RUN N89°51'04"W, A DISTANCE OF 226.38 FEET; THENCE RUN N00°50'16"W, A DISTANCE OF 278.00 FEET TO THE POINT OF BEGINNING.

ITEM 7.V**APPROVAL TO SELL HANGAR AT 4134 AVIATION DRIVE TO CIRRUS AIRCRAFT AND APPROVE MEMORANDUM OF LEASE****Request**

Approval to sell an aircraft hangar at 4134 Aviation Drive to Cirrus Design Corporation, D/B/A Cirrus Aircraft and to provide the City Manager with authorization to sign any documents needed for the closing of the sale.

Explanation

On September 14, 2021, Cirrus Design Corporation d/b/a Cirrus Aircraft signed an Airport Ground Lease Agreement with the City to lease an aircraft hangar at 4134 Aviation Drive, at Kissimmee Gateway Airport for the purposes of establishing a customer service center. Section 13(a) of the Lease Agreement provided Cirrus the option to purchase the hangar within the first four years of the lease for \$1,590,000, which is the amount the City paid for the hangar. Cirrus has provided the City with a Notice of Intent to purchase the hangar at this time.

The hangar ground lease will continue at the standard ground lease rate of \$0.27 per square feet or \$15,297.39 annually. It is intended that Cirrus will construct additional facilities on an 8-acre parcel near Dyer Blvd (Parcel 8). The investment will meet or exceed \$5,000,000.00 and include a forty-year lease term with an additional ten-year lease option.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
46100361-361105	N/A	Increase	400,000	
35690709-509171	CM1815	Increase	459,578	
00190700-509276	N/A	Increase	730,422	

Financial Summary:

Proceeds from the sale of the hangar will repay the General Fund for a loan approved by the City Commission on July 6, 2021, Item 7.L to purchase the aircraft hangar and other funding sources.

Recommendation

Staff recommends Commission approval of the hangar sale and memorandum of lease agreements with Cirrus Aircraft and Commission approval for the City Manager to sign any documents that may be needed to effectuate the sale of the hangar at closing.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. Cirrus - KISM - First Amendment to Ground Lease
2. Cirrus - KISM - Memo of Ground Lease
3. Cirrus - KISM - Termination of Lease and Memo of Lease (WB Hangars)
4. Cirrus - KISM - Quitclaim Deed
5. Cirrus - KISM - Warranty Bill of Sale
6. Cirrus - KISM - Declaration of Severance
7. Cirrus - KISM - Escrow Agreement
8. Cirrus - KISM - Seller's Closing Certificate
9. Cirrus - KISM - FIRPTA. V2
10. CIRRUS HANGAR LEASE

**FIRST AMENDMENT
TO
KISSIMMEE GATEWAY AIRPORT
GROUND LEASE AGREEMENT
AIRPORT LESSEE**

THIS FIRST AMENDMENT TO KISSIMMEE GATEWAY AIRPORT GROUND LEASE AGREEMENT AIRPORT LESSEE (this “**Amendment**”) is made and entered into as of _____, 202__ (“**Effective Date**”), by and between the City of Kissimmee, a municipal corporation of the State of Florida (“**Lessor**”), and Cirrus Design Corporation d/b/a Cirrus Aircraft, a Wisconsin corporation (“**Lessee**”).

RECITALS

A. Lessor and Lessee entered into that certain Kissimmee Gateway Airport Ground Lease Agreement Airport Tenant dated September 14, 2021 (the “**Lease**”), relating to the lease of a portion of the real property located at the Airport and having an address of 4134 Aviation Drive, Kissimmee Gateway Airport, more fully described in the Lease as the Leased Premises.

B. Upon even date herewith, Lessee acquired the Hangar from Lessor pursuant to Part Thirteen and Lessee’s Purchase Option contained in the Lease.

C. Lessor and Lessee desire to amend the Lease as set forth in this Amendment.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Defined Terms.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Lease.

2. **Term.** The first (1st) and second (2nd) sentences of Section 2.A of the Lease are hereby deleted in their entirety and replaced with the following:

“The term of this Lease shall be for a period commencing on October 1, 2021 (the “**Commencement Date**”), and ending at 11:59 p.m. on December 31, 2061, unless otherwise extended for a Renewal Period or earlier terminated as provided in this Lease (as extended or earlier terminated, such period being the “**Term**”).”

3. **Brokers.** Neither Lessor nor Lessee was represented by a broker in connection with this Amendment. Each of Lessor and Lessee agrees to indemnify, defend and hold harmless the other from and against any claims for any broker’s fees or finder’s fees made by any broker claiming to represent it on account of any dealings in connection with this Amendment.

4. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of Lessor, Lessee and their respective successors and assigns.

5. **Ratification and Reaffirmation of Lease.** Lessee hereby ratifies the Lease, as amended by this Amendment, and its obligations thereunder. Except as specifically amended in this Amendment, the terms and conditions of the Lease remain unchanged and in full force and effect.

6. Counterparts. This Amendment may be executed in any number of counterparts, all of which shall be considered one and the same Amendment, even though all parties hereto have not signed the same counterpart. This Amendment may be transmitted by fax or by electronic mail in portable document format (“**pdf**”) and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures.

[Remainder of page intentionally blank; signature pages follow]

SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
KISSIMMEE GATEWAY AIRPORT
GROUND LEASE AGREEMENT
AIRPORT LESSEE

IN WITNESS WHEREOF, Lessor has executed this Amendment as of the date first written above.

CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Mayor-Commissioner

ATTEST:

City Clerk

Approved as to form and legality:

City Attorney

SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
KISSIMMEE GATEWAY AIRPORT
GROUND LEASE AGREEMENT
AIRPORT LESSEE

IN WITNESS WHEREOF, Lessee has executed this Amendment to be effective as of the date first above written.

CIRRUS DESIGN CORPORATION D/B/A
CIRRUS AIRCRAFT, a Wisconsin corporation

By: W. Todd
Name: W. Todd Simmons
Its: President, Cirrus Aircraft

RETURN TO AFTER RECORDING:

Elizabeth S. Runde
Escrow Officer and Counsel
First American Title Insurance Company
National Commercial Services
121 South 8th Street, Suite 1250
Minneapolis, MN 55402

THIS INSTRUMENT PREPARED BY:

Sara J. Wenzel Edstrom
Faege Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

(space above this line for recording information)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of the _____ day of _____, 202____, by and between THE CITY OF KISSIMMEE, FLORIDA, a municipal corporation of the State of Florida ("Lessor"), and CIRBUS DESIGN CORPORATION D/B/A CIRBUS AIRCRAFT, a Wisconsin corporation ("Lessee").

WITNESSETH

- A. Lessor owns certain real property and improvements to real property located at 4134 Aviation Drive, Kissimmee, Florida 34741, commonly known as the Kissimmee Gateway Airport, a municipal airport of the City of Kissimmee, Florida (the "Airport");
- B. Lessor and Lessee have entered into a certain Kissimmee Gateway Airport Ground Lease Agreement Airport Lessee (as amended, "Ground Lease") dated as of September 14, 2021, and amended upon even date herewith, wherein Lessee has ground leased a portion of the real property located at the Airport from Lessor, as more fully described on Exhibit A attached hereto and made a part hereof (the "Leased Premises").

NOW, THEREFORE, Lessor and Lessee hereby state the following for recording and agree that:

- 1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Ground Lease.
- 2. Term. The Commencement Date of the Ground Lease was October 1, 2021, and the Term of the Ground Lease expires on December 31, 2061, subject to extension or adjustment pursuant to the Phase II Lease, if applicable.
- 3. Renewal Period. Subject to and upon the terms and conditions of the Ground Lease, Lessee has one (1) right to renew the Ground Lease for an additional term of ten (10) years.

4. Effect. This Memorandum is to be recorded in order that third parties will have notice of the existence of the Ground Lease. All of the terms, conditions, provisions and covenants of the Ground Lease are incorporated in this Memorandum by reference as though written out at length herein, and the Ground Lease and this Memorandum shall be deemed to constitute a single instrument or document; provided, that in the event of a conflict between this Memorandum and the Ground Lease, the terms and conditions of the Ground Lease shall govern and nothing herein shall be construed to be a modification of or amendment to any of the terms and conditions of the Ground Lease.

5. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

6. Governing Law. This Memorandum shall be construed, performed and enforced in accordance with the laws of the State of Florida.

*[Remainder of page intentionally left blank.
Signatures and notarial sections appear on the following pages.]*

SIGNATURE PAGE
TO
MEMORANDUM OF LEASE

IN WITNESS WHEREOF, Lessor has executed and delivered this instrument and has intended the same to be and become effective as of the day and year first above written.

LESSOR:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

By: _____
Name: _____
Its: _____

Signed, sealed, and delivered in the presence of:

(signature)
Name: _____
(print)

(signature)
Name: _____
(print)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 202____, by _____, as _____ of the City of Kissimmee, Florida, a municipal corporation of the State of Florida, on behalf of such entity. He/She is personally known to me or has produced a _____ as identification.

(Affix Notary Seal or Stamp)

NOTARY PUBLIC (Signature)

(Printed Name)

My Commission Expires:

SIGNATURE PAGE
TO
MEMORANDUM OF LEASE

IN WITNESS WHEREOF, Lessee has executed and delivered this instrument and has intended the same to be and become effective as of the day and year first above written.

LESSEE:

CIRRUS DESIGN CORPORATION D/B/A
CIRRUS AIRCRAFT, a Wisconsin corporation

By: W. Todd Simmons
Name: W. Todd Simmons
Its: President, Cirrus Aircraft, Inc.

Signed, sealed, and delivered in the presence of:

[Signature]
(signature)
Name: Curis Landherr
(print)

[Signature]
(signature),
Name: PATRICK SNIPPEN
(print)

STATE OF TENN.

COUNTY OF BLOUNT

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13th day of DEC, 2021, by W. TODD SIMMONS as PRESIDENT, C.E.O. of Cirrus Design Corporation d/b/a Cirrus Aircraft, a Wisconsin corporation, on behalf of such entity. He/She is personally known to me or has produced a [Signature] as identification.

(Affix Notary Seal or Stamp)

NOTARY PUBLIC (Signature) Catherine Ann Nyen
(Printed Name)

My Commission Expires:

6-25-2024

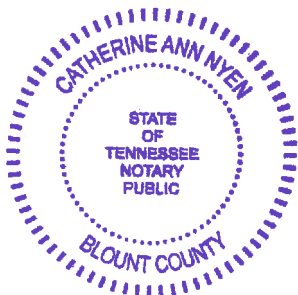


EXHIBIT A

Legal Description of the Property

The Leased Premises referred to herein below is situated in the County of Osceola, State of Florida, and is described as follows:

PARCEL A:

LOT 1 KISSIMMEE AIRPORT BUSINESS AIR PARK AS RECORDED IN PLAT BOOK 27, PAGE 14 OF PUBLIC RECORDS OF OSCEOLA COUNTY FLORIDA

FKA

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET, THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET, THENCE RUN NORTH 89°44' 16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET, THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 32.00 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 178.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

PARCEL B:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA. THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST A DISTANCE OF 27.00 FEET; THENCE RUN SOUTH 89°44'16" WEST, A DISTANCE OF 45.00 FEET, THENCE RUN NORTH 62°29'40" WEST, A DISTANCE OF 57.95 FEET TO THE POINT OF BEGINNING.

RETURN TO AFTER RECORDING:

Elizabeth S. Runde
Escrow Officer and Counsel
First American Title Insurance Company
National Commercial Services
121 South 8th Street, Suite 1250
Minneapolis, MN 55402

THIS INSTRUMENT PREPARED BY:

Sara J. Wenzel Edstrom
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

(space above this line for recording information)

TERMINATION OF LEASE
AND
TERMINATION AND RELEASE OF MEMORANDUM OF LEASE

THIS TERMINATION OF LEASE AND TERMINATION AND RELEASE OF MEMORANDUM OF LEASE ("Termination") is made as of the _____ day of _____, 202____, by and between THE CITY OF KISSIMMEE, FLORIDA, a municipal corporation of the State of Florida ("Lessor"), and WB HANGARS, LLC, a Florida limited liability company ("Lessee").

WITNESSETH

- A. Lessor and Lessee are parties to that certain Lease dated June 14, 2012 (the "Lease") for certain property in Kissimmee, Florida, legally described on Exhibit A Attached hereto and made a part hereof (the "Leased Premises").
- B. Lessor and Lessee are parties to that certain Memorandum of Lease dated June 14, 2012, recorded June 15, 2012, with the Clerk of Court for Osceola County, Florida, in Book 4284, Pages 2464-2466, memorializing the Lease (the "Memorandum").
- C. Lessor and Lessee desire to terminate the Lease, and desire to terminate the Memorandum.

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

1. Termination of Lease. Lessor and Lessee hereby agree that the Lease terminated effective as of July 8th, 2021, the Lease is of no further force or effect, and neither party has any further obligations thereunder.

2. Memorandum of Lease. Lessor and Lessee hereby terminate the Memorandum and all provisions thereof, and hereby release the Leased Premises from the Memorandum and the Lease memorialized thereby.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

*[Remainder of page intentionally left blank.
Signatures and notarial sections appear on the following pages.]*

SIGNATURE PAGE
TO
TERMINATION OF LEASE
AND
TERMINATION AND RELEASE OF MEMORANDUM OF LEASE

IN WITNESS WHEREOF, Lessor has executed and delivered this instrument and has intended the same to be and become effective as of the day and year first above written.

LESSOR:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

By: _____
Name: _____
Its: _____

Signed, sealed, and delivered in the presence of:

(signature)
Name: _____
(print)

(signature)
Name: _____
(print)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 202____, by _____, as _____ of the City of Kissimmee, Florida, a municipal corporation of the State of Florida, on behalf of such entity. He/She is personally known to me or has produced a _____ as identification.

(Affix Notary Seal or Stamp)

NOTARY PUBLIC (Signature)

(Printed Name)

My Commission Expires:

SIGNATURE PAGE

TO
TERMINATION OF LEASE
AND
TERMINATION AND RELEASE OF MEMORANDUM OF LEASE

IN WITNESS WHEREOF, Lessee has executed and delivered this instrument and has intended the same to be and become effective as of the day and year first above written.

LESSEE:

WB HANGARS, LLC,
a Florida limited liability company

By: _____
Name: _____
Its: _____

Signed, sealed, and delivered in the presence of:

(signature)
Name: _____
(print)

(signature)
Name: _____
(print)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ___ day of _____, 202___, by _____, as _____ of WB Hangars, LLC, a Florida limited liability company, on behalf of such entity. He/She is personally known to me or has produced a _____ as identification.

(Affix Notary Seal or Stamp)

NOTARY PUBLIC (Signature)

(Printed Name)

My Commission Expires:

EXHIBIT A

Legal Description of the Leased Premises

[SEE ATTACHED]

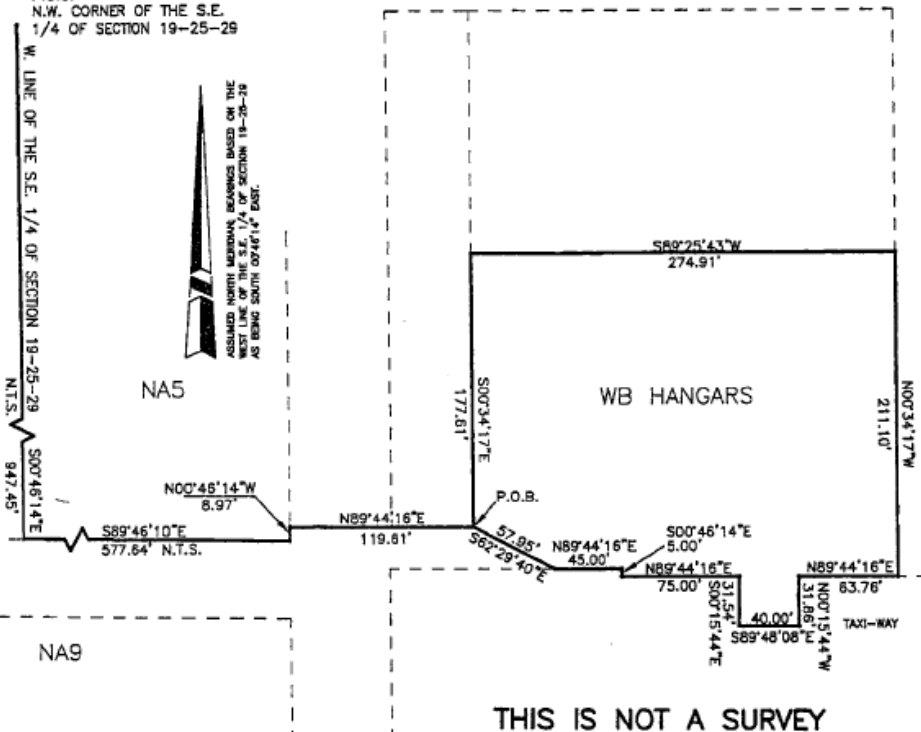
SKETCH OF LEGAL DESCRIPTION (WB HANGERS LEASE)

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA; THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET; THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.84 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 62°29'40" EAST, A DISTANCE OF 57.95 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 45.00 FEET; THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 5.00 FEET; THENCE RUN SOUTH 89°48'08" EAST, A DISTANCE OF 75.00 FEET; THENCE RUN SOUTH 00°15'44" EAST, A DISTANCE OF 31.54 FEET; THENCE RUN SOUTH 89°48'08" EAST, A DISTANCE OF 40.00 FEET; THENCE RUN NORTH 00°15'44" WEST, A DISTANCE OF 31.86 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 63.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST, A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

CONTAINING 57,925 SQ. FT. OR 1.33 ACRES, MORE OR LESS.

P.O.C.
N.W. CORNER OF THE S.E.
1/4 OF SECTION 19-25-29



B.O.C. = BACK OF CURB	ESMT = EASEMENT	D/S = OFFSET	R = RADIAL	Δ = DELTA (CENTRAL ANGLE)
B.S. = BUILDING	F.B. = FIELD BOOK	D.R. = OFFICIAL RECORDS	R.P. = RADIUS POINT	Δ = CALCULATED DATA
C.B. = CHAIN BLOCK	F.S. = FURNISH FLOOR	P.B. = PLAT BOOK	R.S. = RESURVEY	Δ = DEED DATA
C.S. = CHAIN SURVEY	F.T. = FOUND	P.C. = POINT OF CURVATURE	R.L. = REGISTERED LAND SURVEYOR	Δ = LEGAL DESCRIPTION DATA
C.H. = CHAIN HOLE	F.N. = FOUND NAIL	P.I. = POINT OF INTERSECTION	R.O. = RIGHT OF WAY	Δ = PLAT DATA
C.L. = CHAIN LINE	F.O. = FOUND OIL	P.L. = POINT OF LANDING	R.T. = RIGHT OF TRAIL	Δ = CENTERLINE
C.M. = CHAIN MARK	F.P. = FOUND PILE	P.M. = POINT OF MEASUREMENT	S.E. = SECTION	Δ = ASSOCIATION OF
C.N. = CHAIN NAIL	F.R. = FOUND RAIL	P.N. = POINT OF NAIL	S.L. = SURFACE LENGTH OF CURVE	Δ = PONDICIA VILLAGE
C.O. = CHAIN OIL	F.S. = FOUND SIGN	P.O. = POINT OF OIL	T.L. = TANGENT LENGTH OF CURVE	Δ = BUILDING SETBACK LINE
C.P. = CHAIN PILE	F.T. = FOUND TIE	P.P. = POINT OF PILE	T.P. = TOP OF BANK	
C.R. = CHAIN RAIL	F.U. = FOUND UTILITY	P.R. = POINT OF RAIL	T.W. = TAXI-WAY	
C.S. = CHAIN SIGN	F.V. = FOUND VALVE	P.S. = POINT OF SIGN	U. = UTILITY	
C.T. = CHAIN TIE	F.W. = FOUND WALL	P.T. = POINT OF TIE	U.S. = UNDERGROUND	
C.V. = CHAIN VALVE	F.W. = FOUND WALL	P.W. = POINT OF WALL		
C.W. = CHAIN WALL	F.W. = FOUND WALL	P.W. = POINT OF WALL		

No Underground Installations or Improvements Have Been Located Except as Noted.
The Surveyor Has Not Abstracted The Lands Shown Hereon For Easements, Rights Of Way And Restrictions, If Any.
Elevations Refer To National Geodetic Vertical Datum Of 1929, unless otherwise noted. Do Not Use Building Ties to Construct
Deed or Platted Lines. There may be additional restrictions and/or easements that are not recorded on this plat of survey
that may be found in the Public Records of this county.
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

House Model	BLDG. Permit No.	Project Address
Scale 1" = 80'	Sec. Twp. Rng.	Revisions
Survey Type	Survey Date	F.B./PG. C.C. Date By
Boundary	06-14-12	
Sketch of Legal		
Farm Boards		
Foundation		
Boundary/Final		

Hanson, Walter & Associates, Inc. HWA
Engineering, Surveying and Planning
400 W. BAYVIEW STREET KISSIMEE, FL 34741-5481 (407)847-9433
SURVEYING CERTIFICATE OF AUTHORIZATION #3270
ENGINEERING CERTIFICATE OF AUTHORIZATION #3285

Carol Castleberry 6/14/12
Carol Castleberry, P.L.S. # 4224
John M. Hughes, P.L.S. # 6387

\\4224-01 Warbird\\Survey1\\Cadd\\LEGALS\\overall-SOL.dwg * Jun 14, 2012-3:31pm * plotted by castleberry

EXHIBIT "A"

RETURN TO AFTER RECORDING:

Elizabeth S. Runde
Escrow Officer and Counsel
First American Title Insurance Company
National Commercial Services
121 South 8th Street, Suite 1250
Minneapolis, MN 55402

THIS INSTRUMENT PREPARED BY:

Sara J. Wenzel Edstrom
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Property Appraisers ID: _____

(space above this line for recording information)

QUITCLAIM DEED

THIS QUITCLAIM DEED is made as of the _____ day of _____, 2021, by THE CITY OF KISSIMMEE, FLORIDA, a municipal corporation of the State of Florida, whose mailing address is Kissimmee Gateway Airport, 401 Dyer Boulevard, Kissimmee, Florida 324741-4613, Attn: Director of Aviation (“Grantor”), hereby conveys and quitclaims to CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT, a Wisconsin corporation, whose mailing address is 4515 Taylor Circle, Duluth, Minnesota 55811, Attn: Legal Department (“Grantee”).

(Wherever used herein the terms “Grantor” and “Grantee” include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of trustees, corporations and partnerships.)

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, does hereby remise, release and quit-claim unto Grantee forever, all of Grantor’s right, title and undivided interest in and to all improvements located on that certain real property in Osceola County, Florida, legally described on the attached Exhibit A (the “**Real Property**”) and all appurtenances thereto, including the aircraft hangar and all improvements related to the use and operation thereof, and in the case of each of the foregoing, located on the Real Property as of the date of this Deed (collectively, the “**Hangar**”).

*[Remainder of page intentionally left blank.
Signatures and notarial sections appear on the following pages.]*

IN WITNESS WHEREOF, Grantor has executed and delivered this instrument and has intended the same to be and become effective as of the day and year first above written.

GRANTOR:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

By: _____
Name: _____
Its: _____

Signed, sealed, and delivered in the presence of:

(signature)
Name: _____
(print)

(signature)
Name: _____
(print)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 202____, by _____, as _____ of the City of Kissimmee, Florida, a municipal corporation of the State of Florida, on behalf of such entity. He/She is personally known to me or has produced a _____ as identification.

(Affix Notary Seal or Stamp)

NOTARY PUBLIC (Signature)

(Printed Name)

My Commission Expires:

EXHIBIT A

Legal Description of the Property

The Real Property referred to herein below is situated in the County of Osceola, State of Florida, and is described as follows:

PARCEL A:

LOT 1 KISSIMMEE AIRPORT BUSINESS AIR PARK AS RECORDED IN PLAT BOOK 27, PAGE 14 OF PUBLIC RECORDS OF OSCEOLA COUNTY FLORIDA

FKA

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET, THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET, THENCE RUN NORTH 89°44' 16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET, THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 32.00 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 178.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

PARCEL B:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA. THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST A DISTANCE OF 27.00 FEET; THENCE RUN SOUTH 89°44'16" WEST, A DISTANCE OF 45.00 FEET, THENCE RUN NORTH 62°29'40" WEST, A DISTANCE OF 57.95 FEET TO THE POINT OF BEGINNING.

WARRANTY BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the City of Kissimmee, a municipal corporation of the State of Florida (“**Grantor**”), hereby sells, transfers, and conveys to Cirrus Design Corporation d/b/a Cirrus Aircraft, a Wisconsin corporation, its successors and assigns (“**Grantee**”), to have and hold forever, all of Grantor’s right, title and interest in and to all improvements located on the Real Property (as defined below) and all appurtenances thereto, including the aircraft hangar and all improvements related to the use and operation thereof (collectively, the “**Hangar**”), and in the case of each of the foregoing, located on the real property described on Exhibit A attached hereto and made a part hereof (the “**Real Property**”) as of the date of this Warranty Bill of Sale.

Grantor does hereby covenant and agree to and with Grantee that Grantor is the lawful owner of the Hangar and has good right to sell the same; that the Hangar is free from all encumbrances; and Grantor will warrant and defend the sale of the Hangar hereby made to Grantee, against all and every person and persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, Grantor has caused this Warranty Bill of Sale to be executed and delivered on this _____ day of _____, 202____.

[Signature Page to Follow]

**SIGNATURE PAGE
TO
WARRANTY BILL OF SALE**

IN WITNESS WHEREOF, Grantor has caused this Warranty Bill of Sale to be executed the day and year first above written.

GRANTOR:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

Olga Gonzalez
Mayor-Commissioner

**EXHIBIT A
TO
WARRANTY BILL OF SALE**

LEGAL DESCRIPTION OF THE REAL PROPERTY

The Real Property referred to herein below is situated in the County of Osceola, State of Florida, and is described as follows:

PARCEL A:

LOT 1 KISSIMMEE AIRPORT BUSINESS AIR PARK AS RECORDED IN PLAT BOOK 27, PAGE 14
OF PUBLIC RECORDS OF OSCEOLA COUNTY FLORIDA

FKA

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET, THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET, THENCE RUN NORTH 89°44' 16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET, THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 32.00 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 178.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

PARCEL B:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA. THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST A DISTANCE OF 27.00 FEET; THENCE RUN SOUTH 89°44'16" WEST, A DISTANCE OF 45.00 FEET, THENCE RUN NORTH 62°29'40" WEST, A DISTANCE OF 57.95 FEET TO THE POINT OF BEGINNING.

RETURN TO AFTER RECORDING:

Elizabeth S. Runde
Escrow Officer and Counsel
First American Title Insurance Company
National Commercial Services
121 South 8th Street, Suite 1250
Minneapolis, MN 55402

THIS INSTRUMENT PREPARED BY:

Sara J. Wenzel Edstrom
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

(space above this line for recording information)

DECLARATION OF SEVERANCE

THIS DECLARATION OF SEVERANCE (the “**Declaration**”) is made this _____ day of _____, 202____, by City of Kissimmee, Florida, a municipal corporation of the State of Florida (the “**Declarant**”).

RECITALS

A. Declarant owns that certain real property legally described on the attached Exhibit A (the “**Land**”).

B. Declarant desires to sever from Land all improvements located on the Land and all appurtenances thereto, including the aircraft hangar and all improvements related to the use and operation thereof, and in the case of each of the foregoing, located on the Land as of the date of this Declaration (collectively, the “**Existing Improvements**”), such that the Existing Improvements and Land may be separately owned.

NOW, THEREFORE, Declarant hereby imposes upon and subjects the Land and Existing Improvements to the following terms and conditions:

1. The Existing Improvements are hereby severed from the Land.
2. The Existing Improvements shall retain their severed character and shall be treated as separate property with respect to the rights of the owners thereof, and shall not become fixtures or a part of the Land. In no event shall improvements constructed on the Land after the date of this Declaration be deemed to be part of the Existing Improvements.

3. This Declaration shall run with the Land and the Existing Improvements and shall be binding upon and inure to the benefit of the owners of the Land and the Existing Improvements, their respective heirs, successors and assigns, as the case may be.

4. This Declaration may be amended by a written agreement signed by the then current owner(s) of the Land and the current owner(s) of the Existing Improvements and shall be effective only when recorded in the Osceola County Recorder's Office.

[Remainder of page intentionally blank; signature page follows]

SIGNATURE PAGE
TO
DECLARATION OF SEVERANCE

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

DECLARANT:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

Olga Gonzalez
Mayor-Commissioner

Signed, sealed, and delivered in the presence of:

(signature)
Name: _____
(print)

(signature)
Name: _____
(print)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ___ day of ___, 202___, by _____, as _____ of the City of Kissimmee, Florida, a municipal corporation of the State of Florida, on behalf of such entity. He/She is personally known to me or has produced a _____ as identification.

(Affix Notary Seal or Stamp)

NOTARY PUBLIC (Signature)

(Printed Name)

My Commission Expires:

**EXHIBIT A
TO
DECLARATION OF SEVERANCE**

Legal Description of the Land

The Land referred to herein below is situated in the County of Osceola, State of Florida, and is described as follows:

PARCEL A:

LOT 1 KISSIMMEE AIRPORT BUSINESS AIR PARK AS RECORDED IN PLAT BOOK 27, PAGE 14
OF PUBLIC RECORDS OF OSCEOLA COUNTY FLORIDA

FKA

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET, THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET, THENCE RUN NORTH 89°44' 16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET, THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 32.00 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 178.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

PARCEL B:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA. THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST A DISTANCE OF 27.00 FEET; THENCE RUN SOUTH 89°44'16" WEST, A DISTANCE OF 45.00 FEET, THENCE RUN NORTH 62°29'40" WEST, A DISTANCE OF 57.95 FEET TO THE POINT OF BEGINNING.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "**Agreement**" or this "**Escrow Agreement**", as applicable) is made and entered into effective as of _____, 202__ (the "**Effective Date**"), by and among the City of Kissimmee, a municipal corporation of the State of Florida ("**City**"), Cirrus Design Corporation d/b/a Cirrus Aircraft, a Wisconsin corporation ("**Cirrus**"), and First American Title Insurance Company ("**Escrow Agent**") (collectively, the "**Parties**" or "**parties**", as applicable).

RECITALS:

A. As of the Effective Date hereof, the City owns certain improvements and all appurtenances thereto, including the aircraft hangar and all improvements related to the use and operation thereof, located on the Leased Premises at the Kissimmee Gateway Airport, City of Kissimmee, County of Osceola, Florida, as further described in that certain Kissimmee Gateway Airport Ground Lease Agreement Airport Tenant dated September 14, 2021, by and between Seller, as lessor, and Purchaser, as lessee (as amended, the "**Ground Lease**"). Capitalized terms not defined herein are assigned the meanings given to such terms in the Ground Lease.

B. Cirrus exercised its Purchase Option, as defined in the Ground Lease, on November 11, 2021, and desires to acquire fee ownership of the Hangar (the "**Transaction**"), subject to the conditions in this Agreement.

C. As of the Effective Date hereof, Cirrus is in the process of completing its due diligence investigations of the Hangar, including, without limitation, review of title and survey, review of any service contracts entered into by the City with respect to the Hangar, and a physical inspection of the Hangar (together, the "**Due Diligence Review**").

D. As of the Effective Date hereof, Cirrus has delivered into escrow (i) original copies of the following Closing documents in connection with the proposed Transaction:

- i. Cirrus' Certificate of Authority;
- ii. Cirrus' counterpart to the First Amendment to Kissimmee Gateway Airport Ground Lease Agreement Airport Lessee;
- iii. Cirrus' counterpart to the Memorandum of Lease; and
- iv. Cirrus' counterpart to the Settlement Statement

(together, (D)(i)-(iv) shall be herein referred to as "**Cirrus' Deliveries**"), and (ii) funds sufficient to satisfy the amounts due from Cirrus stated in the Settlement Statement (the "**Funds**").

E. As of the Effective Date hereof, the City has delivered into escrow original copies of the following Closing document in connection with the proposed Transaction:

- i. The City's counterpart to the First Amendment to Kissimmee Gateway Airport Ground Lease Agreement Airport Lessee;
- ii. Warranty Bill of Sale;
- iii. Quitclaim Deed;
- iv. Declaration of Severance;
- v. Seller's Closing Certificate;
- vi. Certificate of Non-Foreign Status;
- vii. Termination of Lease and Termination and Release of Memorandum of Lease executed by the City and WB Hangars, LLC, a Florida limited liability company;

- viii. The City's counterpart to the Memorandum of Lease; and
- ix. The City's counterpart to the Settlement Statement

(together, (E)(i)-(ix) shall be herein referred to as the "**City's Deliveries**"; together, Cirrus' Deliveries and the City's Deliveries shall be herein referred to as the "**Documents**"). [NTD: "Documents" to be updated at Closing to reflect full list of deliverables.]

F. The Escrow Agent has agreed to receive, hold and disburse the Funds and Documents (collectively, the "**Escrow Items**") in accordance with the terms and provisions of this Escrow Agreement.

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements herein contained, and other good and valuable consideration to each of the parties in hand paid by each of the other parties hereto, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following:

AGREEMENT:

I

OPENING OF ESCROW

1.1 Appointment of Escrow Agent. Subject to the terms and provisions of this Escrow Agreement, the Parties hereby designate Escrow Agent as the escrow agent with respect to the escrow of the Escrow Items. Escrow Agent hereby accepts the obligations and duties of Escrow Agent with regard to the retention and disposition of the Escrow Items in accordance with the terms and provisions of this Escrow Agreement and hereby agrees to serve as Escrow Agent hereunder.

1.2 Deposit and Administration of Escrow Items. As of the Effective Date, Escrow Agent has received the Escrow Items. Cirrus may request, in Cirrus' sole and absolute discretion, that Escrow Agent deposit the Funds into an interest-bearing account. All income derived from interest earned on account of the Funds held by Escrow Agent during the term hereof, if any, shall belong to Cirrus. Escrow Agent shall hold the Funds in escrow pursuant to the terms and provisions of this Escrow Agreement until the requirements of Section 2.1 below are satisfied (or, if applicable, until Section 2.2 below is triggered), at which time the Escrow Agent is authorized to release and deliver the Escrow Items in accordance with the provisions of Article II hereof.

II

DISTRIBUTION OF ESCROW ITEMS

2.1 Distribution of Escrow Items.

(a) If Cirrus determines that it is satisfied with its Due Diligence Review, in its sole and absolute discretion, Cirrus shall deliver to the City and Escrow Agent a written notice affirming Cirrus' desire to close on the Transaction and acquire the Hangar (the "**Closing Notice**").

(b) Upon receipt of the Closing Notice, Escrow Agent shall:

- (i) Assemble the fully executed Documents;
- (ii) To the extent separate signature pages to the Documents have been provided by Cirrus or the City, mark any unused signature block with "See attached signature page";

- (iii) Deliver PDF copies of the fully assembled, executed and dated Documents to Cirrus and the City;
- (iv) Disburse the Funds in strict accordance with the Settlement Statement;
- (v) Record the following documents in the following order in the appropriate property records of Osceola County, Florida:
 - a. Termination of Lease and Termination and Release of Memorandum of Lease;
 - b. Memorandum of Lease;
 - c. Declaration of Severance;
 - d. Quitclaim Deed.
- (vi) Within one (1) business day after receipt from the property records of Osceola County, Florida, deliver to Cirrus and the City copies of all recorded Documents; and
- (vii) Complete any other matters noted in separate instruction letters provided by Cirrus and/or the City, if any.

2.2 If Cirrus, in its sole and absolute discretion, provides notice that it is not satisfied with its Due Diligence Review for any reason and will not be providing the Closing Notice, or if, for any reason or no reason, Cirrus does not provide the Closing Notice to the City and Escrow Agent on or before April 30, 2022, the Escrow Agent is directed to return the Escrow Items back to the Party that initially deposited such Escrow Items (as applicable) (e.g., the Escrow Funds shall be returned to Cirrus), at which point Cirrus and the City shall have no further obligations under this Agreement or under any Document, and the Transaction shall not be consummated except as may be otherwise agreed to by Cirrus and the City.

III

ESCROW AGENT

3.1 Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except its own willful misconduct, negligence or its own breach of this Escrow Agreement, and Escrow Agent shall have no duties to anyone except those signing this Escrow Agreement.

3.2 Each party further agrees to save, defend, indemnify and hold harmless the Escrow Agent from and against any and all other claims, demands, causes of action, losses, liabilities, damages, costs and expenses, including, without limitation, court costs, legal expenses and reasonable attorney fees, incurred by the Escrow Agent in good faith, in connection with the performance of its obligations under this Escrow Agreement, except to the extent any such claims, demands, causes of actions, losses, liabilities, damages, costs or expenses are incurred or suffered by the Escrow Agent as a result of its own willful misconduct, negligence or its own breach of this Escrow Agreement. The indemnity provisions of the parties in this Section 3.2 shall survive the expiration or any termination of this Escrow Agreement.

3.3 It is understood and agreed that in the case of any controversy, Escrow Agent may, but is not obligated to, refrain from acting in any manner until it receives written agreement from all parties hereto, or Escrow Agent may interplead the subject matter of this Escrow Agreement into a court of competent jurisdiction, and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities

and responsibilities hereunder. The parties expressly acknowledge Escrow Agent's right to interplead the money into a court of competent jurisdiction in Osceola County, Florida.

3.4 Deposit by Escrow Agent of the documents and funds (less permitted charges and expenses) of this Agreement in court shall relieve Escrow Agent of all further responsibility and liability. Escrow Agent is hereby expressly authorized to disregard in its sole discretion any and all notices or warnings given by any of the parties to this Agreement, or by any other person or corporation, once this Agreement is deposited or interplead to the court. The Escrow Agent is hereby expressly authorized to comply with and obey any and all orders, judgments or decrees entered or issued by any such court, and in case Escrow Agent obeys or complies with any order, judgment or decree of any court it shall not be liable to any of the parties to this Agreement, or to any other person, firm or corporation.

3.5 Escrow Agent may resign as Escrow Agent under this Escrow Agreement by giving written notice to each of the parties in accordance with the provisions of this Escrow Agreement at least thirty (30) days prior to the effective date of such resignation. Thereafter, Escrow Agent shall deliver the Escrow Items held pursuant to this Escrow Agreement upon the joint written and signed authorization of each of the parties. If no such written authorization is received by Escrow Agent within thirty (30) days after the giving of such notice, Escrow Agent is authorized and empowered to deliver the Escrow Items into the registry of a court of competent jurisdiction domiciled in Osceola County, Florida.

3.6 Upon mutual agreement by each of the parties, the Escrow Agent may be removed, with or without cause, and a substitute escrow agent appointed or otherwise designated and the Escrow Items disposed of without any other formality than by giving written notice to Escrow Agent at Escrow Agent's address set forth below, in which event Escrow Agent shall deliver the Escrow Items in accordance with the joint written and signed instructions of the parties and shall thereupon be deemed to be removed as of the date designated in such notice, or if no date is designated, as of the date such delivery is made.

IV MISCELLANEOUS PROVISIONS

4.1 Severability. In the event any provision of this Escrow Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall in no way affect the remainder of this Escrow Agreement which shall remain in full force and effect.

4.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

4.4 Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered and received when actually received by the intended recipient or, whether actually received or not, (a) within two (2) business days after deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested, addressed to the intended recipient at the address shown below, (b) within one (1) business day after deposited with a nationally recognized overnight delivery service (e.g., FedEx or UPS), service fully paid for, addressed to the intended recipient at the address shown below, or (c) transmitted by email (with confirmed transmission) to the intended recipient at the email address shown below.

If to City: Director of Aviation
Kissimmee Gateway Airport
401 Dyer Boulevard
Kissimmee, FL 324741-4613
Email: shaun.germolus@kissimmee.gov

If to Cirrus: Cirrus Design Corporation
4515 Taylor Circle
Duluth, MN 55811
Attn: Curtis Landherr
Email: clandherr@cirrusaircraft.com

WITH A COPY TO: Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attn: Allen Wheeler
Email: allen.wheeler@faegredrinker.com

If to Escrow Agent: First American Title Insurance Company
121 South 8th Street, Suite 1250
Minneapolis, MN 55402
Attn: Elizabeth Runde
Email: erunde@firstam.com

The parties may, from time to time, change their respective addresses upon the giving of five (5) days' written notice to the other parties.

4.5 Entire Agreement; Amendment. This Escrow Agreement contains the complete understanding and agreement of the parties with respect to all matters specifically dealt with herein; and all prior representations, negotiations and understandings with respect thereto are superseded by this Escrow Agreement; provided, however, that this Escrow Agreement may be modified, amended, cancelled or terminated only by the written consent of the parties hereto.

4.6 Attorney Fees. If any party to this Escrow Agreement shall be required to employ an attorney to enforce or defend the rights of such party herein, the prevailing party shall be entitled to recover reasonable attorney fees and costs of suit.

4.7 Time of Essence. Time is of the essence of this Escrow Agreement. If performance of any part of this Escrow Agreement falls on a Saturday, Sunday, or legal holiday (as defined below), the deadline for performance shall be extended to the next business day immediately after the Saturday, Sunday, or legal holiday. A "business day" shall be any day which is not a Saturday, Sunday, or legal holiday; and a "legal holiday" shall be any day national banks are closed for business in Osceola County, Florida.

4.8 Governing Law; Venue. The laws of the State of Florida shall govern the interpretation, validity, performance and enforcement of this Escrow Agreement, without regard to conflict of laws principles. The obligations of the parties under this Escrow Agreement are performable in Osceola County, Florida, and venue for any dispute in connection with this Escrow Agreement shall be in a court of competent jurisdiction in Osceola County, Florida.

4.9 Counterparts. This Escrow Agreement may be executed in any number of counterparts, all of which shall be considered one and the same Escrow Agreement, even though all Parties hereto have not signed the same counterpart. This Escrow Agreement may be transmitted by fax or by electronic mail in portable document format (“**pdf**”) and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**SIGNATURE PAGE
TO
ESCROW AGREEMENT**

IN WITNESS WHEREOF, the Parties have executed this Escrow Agreement to be effective as of the Effective Date.

CITY:

CITY OF KISSIMMEE, FLORIDA

By: _____
Name: _____
Its: _____

**SIGNATURE PAGE
TO
ESCROW AGREEMENT**

CIRRUS:

CIRRUS DESIGN CORPORATION D/B/A
CIRRUS AIRCRAFT, a Wisconsin corporation

By: _____

Name: _____

Its: _____

**SIGNATURE PAGE
TO
ESCROW AGREEMENT**

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____

Name: _____

Its: _____

SELLER'S CLOSING CERTIFICATE

THIS SELLER'S CLOSING CERTIFICATE ("**Certificate**") is made as of this ____ day of _____, 202____, by THE CITY OF KISSIMMEE, FLORIDA, a municipal corporation of the State of Florida (the "**Seller**") to and for the benefit of CIRBUS DESIGN CORPORATION d/b/a CIRBUS AIRCRAFT, a Wisconsin corporation (the "**Purchaser**").

1. This Certificate is given to Purchaser in connection with Purchaser's exercise of its option to purchase the "**Hangar**," as further described in that certain Kissimmee Gateway Airport Ground Lease Agreement Airport Tenant dated September 14, 2021, by and between Seller, as lessor, and Purchaser, as lessee (as amended, the "**Ground Lease**"). The Seller acknowledges and agrees that the terms and provisions of this Certificate shall run to the benefit of Purchaser, its transferees, successors and assigns. The Seller intends that Purchaser, its transferees, successors and assigns rely on the terms and provisions of this Certificate in connection therewith. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Ground Lease.
2. Seller's principal place of business is at:

Kissimmee Gateway Airport
401 Dyer Boulevard
Kissimmee, Florida 324741-4613
3. There have been no:
 - a. Bankruptcy or dissolution proceedings involving Seller during the time said Seller has had any interest in the Hangar.
 - b. Unsatisfied judgments of record against Seller, nor any satisfactions pending in any courts, which affect the Hangar; or
 - c. Tax liens filed against Seller which affect the Hangar.
4. There are no outstanding mortgages, mechanics, tax or judgement liens, or any other monetary liens against or involving Seller or the Hangar.
5. Any bankruptcy or dissolution proceedings of record against business entities with the same or similar names during the time period in which Seller has had any interest in the Hangar are not against Seller.
6. Any judgments or tax liens of record against companies with the same or similar names and relating to the Hangar are not against Seller.
7. There has been no labor or materials furnished to the Hangar at the request of Seller for which payment has not been made.
8. There are no unrecorded contracts, leases, easements, licenses, or other agreements or interests relating to the Hangar or Leased Premises, except for the Ground Lease.
9. Seller knows of no persons in possession of any portion of the Hangar or Leased Premises other than Purchaser pursuant to the Ground Lease.
10. Seller knows of no encroachments or boundary line questions affecting the Hangar or Leased Premises.

SIGNATURE PAGE
TO
SELLER'S CLOSING CERTIFICATE

Executed as of the day and year first above written.

SELLER:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

By: _____
Name: _____
Its: _____

STATE OF FLORIDA)
) ss
COUNTY OF OSCEOLA)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by _____, the _____ of the City of Kissimmee, Florida, a municipal corporation of the State of Florida, on behalf of the municipal corporation.

My Commission Expires:

(Signature of Notary)

My Commission Number:

(Printed Name of Notary)

CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended (collectively, the “**Code**”) provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform Cirrus Design Corporation, d/b/a Cirrus Aircraft, a Wisconsin corporation (“**Transferee**”), that withholding of tax under Section 1445 of the Code will not be required for the transfer of certain property described on Exhibit A attached hereto and incorporated herein by reference, to Transferee by the City of Kissimmee, a municipal corporation of the State of Florida (“**Transferor**”), the undersigned hereby certify the following on behalf of Transferor:

1. Transferor is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder).
2. Transferor’s U.S. taxpayer identification number is as follows: 59-6000348.
3. Transfer’s principal business address is as follows:

City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

Transferor’s airport office address is as follows:

Kissimmee Gateway Airport
401 Dyer Boulevard
Kissimmee, Florida 324741-4613

4. Transferor is not a “disregarded entity” as defined in IRS Regulation 1.1445-2(b)(2)(iii).

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete. I further declare that I have authority to sign this Certification on behalf of the Transferor.

[Remainder of page intentionally blank; signature page follows]

**SIGNATURE PAGE
TO
TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS**

TRANSFEROR:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

By: _____
Name: _____
Its: _____
Date: _____

**EXHIBIT A
TO
CERTIFICATION OF NON-FOREIGN STATUS**

PROPERTY DESCRIPTION

All improvements located on the Property (as defined below) and all appurtenances thereto, including the aircraft hangar and all improvements related to the use and operation thereof, and in the case of each of the foregoing, located on the Property as of the date hereof. For purposes hereof, the "Property" is described as follows:

The Property referred to herein below is situated in the County of Osceola, State of Florida, and is described as follows:

PARCEL A:

LOT 1 KISSIMMEE AIRPORT BUSINESS AIR PARK AS RECORDED IN PLAT BOOK 27, PAGE 14 OF PUBLIC RECORDS OF OSCEOLA COUNTY FLORIDA

FKA

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET, THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET, THENCE RUN NORTH 89°44' 16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET, THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 32.00 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 178.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

PARCEL B:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA. THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET, THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST A DISTANCE OF 27.00 FEET; THENCE RUN SOUTH 89°44'16" WEST, A DISTANCE OF 45.00 FEET, THENCE RUN NORTH 62°29'40" WEST, A DISTANCE OF 57.95 FEET TO THE POINT OF BEGINNING.

**KISSIMMEE GATEWAY AIRPORT
GROUND LEASE AGREEMENT
AIRPORT TENANT**

THIS LEASE AGREEMENT (the “**AGREEMENT**” or “**LEASE**”) is made this 14th day of September, 2021 between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, hereinafter referred to as “**Lessor**” or “**City**” and **CIRRUS DESIGN CORPORATION, D/B/A CIRRUS AIRCRAFT**, a Wisconsin corporation, hereinafter referred to as “**Lessee**.” City and Lessee are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, City is the owner of certain real property and improvements to real property located at 4134 Aviation Drive, Kissimmee, Florida 34741, commonly known as the Kissimmee Gateway Airport, a municipal airport of the City of Kissimmee, Florida (the “**Airport**”); and

WHEREAS, the City desires to ground lease to Lessee, and the Lessee is desirous, willing and able to enter into a ground lease from Lessor for a portion of the real property located at the Airport and having an address of 4134 Aviation Drive, Kissimmee Gateway Airport, to operate a fixed base operation maintenance facility at the Airport, pursuant to the terms of this Agreement.

WHEREAS, on or about the date hereof, Lessor granted to Lessee an option to lease certain additional real property at the Airport consisting of approximately 8 acres (the “**Phase II Land**”) pursuant to that certain Option Agreement between Lessor and Lessee (the “**Option Agreement**”) pursuant to a ground lease attached to the Option Agreement (the “**Phase II Lease**”).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other able consideration, the Parties hereto agree as follows:

**PART ONE
DESCRIPTION OF LEASED PREMISES**

- A. LEASED PREMISES. Lessor leases to Lessee that certain real property located at the Airport, as more specifically described on **Exhibit A** attached hereto and incorporated herein, which consists of approximately 56,657 square feet of real property (1.30 acres) (the “**Leased Premises**”), together with all improvements located thereon and appurtenances thereto, including the aircraft hangar and all improvements related to the use and operation thereof that is depicted on the attached **Exhibit C** (the “**Hangar**”), parking area (containing no less than 30-40 parking stalls) and aircraft parking apron located on the Leased Premises (collectively, the “**Improvements**”). Lessor shall deliver exclusive possession of the Leased Premises to Lessee on the Commencement Date.
- B. CONDITION OF LEASED PREMISES. Lessee accepts the Leased Premises and the Improvement “As Is, Where Is” and in their present condition.
- C. RE-ADJUSTMENT OF LEASED PREMISES. This Lease shall be subject to all

restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the City and the United States of America, the State of Florida, or the County of Osceola, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or City funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency; provided that if Lessee is precluded from using the Leased Premises during any such period, all of Lessee's obligations under this Lease, including its obligation to pay Annual Rent shall be abated during such period and, if such interruption continues for more than ninety (90) days, Lessee shall have the option to extend the Term for the period of such interruption or to terminate this Agreement pursuant to Section 9.B.2 of this Lease. Lessor represents and warrants that none of the foregoing restrictions preclude Lessee from using the Leased Premises for the permitted uses described herein, except as expressly provided in the previous sentence.

In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, Lessee hereby consents to any and all such modifications and changes as may be reasonably required to the extent that such modifications and changes do not materially increase Lessee's obligations under this Lease (including the payment of Annual Rent) or unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease.

PART TWO TERM OF LEASE

- A. PRIMARY TERM. The term of this Lease shall be for a twenty (20) year period, commencing on October 1, 2021 (the "**Commencement Date**"), and ending at 11:59 p.m. on September 30, 2041, unless otherwise extended for a Renewal Period or earlier terminated as provided in this Lease (as extended or earlier terminated, such period being the "**Term**"). If Lessee exercises the Purchase Option (as hereinafter defined), on the effective date of such purchase, the Term will be extended and readjusted to the last day of the fortieth (40th) year after the Closing thereunder. Additionally, if Lessee exercises its option to lease the Phase II Property pursuant to the Option Agreement and commits in the Phase II Lease to investing at least Five Million Dollars (\$5,000,000) on the Phase II Property, the Term shall automatically be extended and adjusted to run conterminously with the term of the Phase II Lease.
- B. RENEWAL OPTION. Provided Lessee is not in default of the Agreement at the time of the exercise of the option past any applicable notice and cure period, Lessee is hereby granted an exclusive first option to renew this Agreement upon all the existing terms and conditions of this Lease for one (1) additional term of ten (10) years (the "**Renewal Period**"). This option shall be exercised by written notice to the City

not less than one hundred twenty (120) days prior to expiration of the existing Term.

- C. HOLDING OVER. In the event Lessee shall continue to occupy the Leased Premises beyond the term of this Agreement after Lessor gives written notice to vacate, such holding over shall not constitute a renewal of this Agreement but shall be a tenancy of sufferance only. The amount of rent to be paid by Lessee during this hold over period shall equal one hundred twenty-five (125%) times the Monthly Rent, prorated for any partial months.

PART THREE RENT

- A. RENT. The initial net rent under this Lease for the Leased Premises is **\$15,297.39** per year, payable monthly (“**Annual Rent**”) plus sales tax and any other applicable tax including property tax. The following sum shall be payable monthly, in advance, in the amount of **\$1,274.78** (“**Monthly Rent**”) plus said taxes. Payment of Monthly Rent will commence on the Commencement Date .

Monthly Rent will be due on the first day of every month (“**Due Date**”) and shall be deemed delinquent if not received by the Lessor on or before the tenth day of every month. The Annual Rent and Monthly Rent shall be subject to adjustment as enumerated in Part Three of this Lease.

- B. RENT ADJUSTMENTS. Lessor and Lessee recognize and agree that the purchasing power of the United States Dollar is evidenced by the Consumer Price Index – Urban Wage Earners and Clerical Workers (“**Price Index**”) as published by the United States Department of Labor’s Bureau of Labor Statistics. Lessor and Lessee also recognize that local market trends in the Central Florida and the Kissimmee area evolve over time and greatly influence the current market values of leaseholds located at the Kissimmee Gateway Airport.

CPI Adjustment. The parties agree that commencing on the first day of the thirty-seventh (37th) month following the Commencement Date and on the first day of each thirty-sixth (36th) month thereafter for the remainder of the Term (and any Renewal Period) (each such date being an “**CPI Adjustment Date**”), the parties hereto will compare the Price Index as of the CPI Adjustment Date to the Price Index that existed on the same date three (3) years earlier to establish the percentage increase in the Price Index for such three (3) year period (such percentage increase being, the “**CPI Adjustment Percentage**”). After the Adjustment Percentage is determined, the Annual Rent (and corresponding Monthly Rent) shall be modified retroactive to the applicable CPI Adjustment Date as follows:

(i) If the CPI Adjustment Percentage is one tenth of one percent (0.1%) to five percent (5.0%): Annual Rent (and corresponding Monthly Rent) shall increase by the same value as the CPI Adjustment Percentage up to five percent (5%);

(ii) If the CPI Adjustment Percentage is greater than five and one tenth of one percent (5.1%): Annual Rent (and corresponding Monthly Rent) shall increase by five percent (5%), plus one-half of the CPI Adjustment Percentage in excess of 5%, but in no

event more than ten percent (10%). By way of example, if the CPI Adjustment Percentage increases by 8%, the Annual Rent (and corresponding Monthly Rent) increase shall be 6.5% (5% plus one-half of the difference between 5% and 8%).

Fair Market Value Adjustment. In addition to the Price Index Adjustment described above, commencing on the first day following the fifth anniversary of the Commencement Date and on each fifth anniversary thereafter for the remainder of the Term (and any Renewal Term) (each such date being an “**Appraisal Adjustment Date**”), the City may obtain an appraisal of ground lease property at the Airport from a MAI certified appraiser that is mutually acceptable to Lessor and Lessee to establish the then Fair Market Rent (as defined below) for the land constituting the Leased Premises, excluding all improvements constructed thereon. If the City deems an appraisal is appropriate due to market conditions, the City shall notify the Lessee of its intention to invoke the right of obtaining an appraisal, sixty (60) days prior to seeking the appraisal and identify in such notice a disinterested MAI appraiser having at least 10 years’ experience appraising airport ground rental values in Florida and not having represented Lessor in the previous five (5) year period. Lessee may approve the appraiser in its reasonable discretion. Such determination to complete an appraisal shall be at the sole discretion and expense of the City. The selected appraiser shall be directed to provide a range of values (from Minimum to Maximum) that constitute the then Fair Market Rent for ground leased premises at the Airport as of the applicable Appraisal Adjustment Date. If the lowest value in the range of Fair Market Rent on the Appraisal Adjustment Date is higher than existing Annual Rent, the Annual Rent (and corresponding Monthly Rent) shall be increased (retroactive to the applicable Appraisal Adjustment Date) to lowest value in the range of Fair Market Rent on the Appraisal Adjustment Date, not to exceed a five percent (5%) increase over the then current Annual Rent. In addition, if the Annual Rent is adjusted as provided in this paragraph, the definition of the CPI Adjustment Date shall be amended to mean the thirty-seventh (37th) month following the Appraisal Adjustment Date used to adjust the Annual Rent as provided in this paragraph and third (3rd) anniversary thereafter for the remainder of the Term (and any Renewal Period). As used herein, the term “Fair Market Rent” shall mean the ground rent that an arms’ length third party ground tenant would pay (on a per square foot basis) to the airport authority for unimproved premises at the Airport, not being under any obligation to do so, taking into account all relevant factors.

The City shall pay the fees and expenses of each appraiser appointed by such party. Any appraiser designated to serve in accordance with the provisions of this Lease shall be designated as an “MAI” appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise commercial real estate, shall be disinterested.

- C. RENT CAPS. Notwithstanding anything to the contrary in this Lease, in no event shall the Annual Rent (and corresponding Monthly Rent) increase under this Article 3 by more than ten percent (10%) during any ten (10) year period during the Term.
- D. HANGAR RENT. In addition to Annual Rent, Lessee shall pay Lessor during the Term, monthly rent for the Hangar in the amount of the difference between Monthly Rent and \$10,000.00 (the “**Hangar Rent**”). As of the Commencement Date, Hangar Rent is \$8,725.23. In the event Lessee exercises the Hangar Purchase Option (as hereinafter

defined) and purchases the Hangar from Lessor, Lessee will no longer be obligated to pay Hangar Rent. Any Hangar Rent paid by Lessee during the Term shall be credited to the purchase price for the Hangar pursuant to the Hangar Purchase Option.

- E. PAYMENT OF SALES TAX. Unless otherwise exempt, Lessee shall be liable at its sole cost and expense, and the City shall have no liability for, any sales, use or similar taxes with respect to all rent and other payments made by Lessee in accordance with the provisions of this Agreement. Lessee shall indemnify, defend, and hold City completely harmless from and against any liability, including any interest and penalties, which might arise in connection with any such taxes.

PART FOUR PAYMENTS

- A. TIME AND PLACE OF PAYMENT. All payments of rents, fee, taxes, and other charges are to be made at the Kissimmee Gateway Airport, City of Kissimmee, 401 Dyer Blvd, Kissimmee, FL 34741, or such other place Lessor may direct Lessee in writing.
- B. DELINQUENT PAYMENT OF RENT AND FEES. If rent or fees are not timely paid, then the Lessee shall pay to Lessor a penalty of 5% of the amount due commencing sixteen (16) days after the DUE DATE. Lessor shall charge no penalty upon that portion of any debt that, in good faith, is in dispute or charge a penalty that exceeds the then amount permitted under Florida law. All late fees are to be paid to Lessor within 30 days of the initial date of accrual.

PART FIVE PRIVILEGES

- A. USE. The Leased Premises shall be used solely for the following Fixed Base Operator Activities as defined in the Minimum Aeronautical Service Standards for Aeronautical Tenants at the Kissimmee Gateway Airport, as amended from time to time, and incorporated by reference into this Lease (the “**Service Standards**”), a copy of which is attached as **Exhibit D:**

Category “A” – Aviation Fuel Sales

Category “B” – Flight Instruction and Aircraft Rental

Category “D” – Airframe and Power Plant Repair

Category “E” – Avionics, Instrument and/or Propeller Repair Service

Category “F” – Other Aeronautical Services

Lessor shall permit or seek any necessary third-party approvals allowing Lessee to be designated as an FBO or Limited FBO at the Airport, as defined in the Service Standards, to (i) operate as a fuel concession; (ii) acquire and operate aircraft fueling equipment to conduct fuel concession operations; and (iii) be exempt from any requirement to pay ad valorem taxes. In the event such approvals are not obtained by Lessor on or before the Commencement Date, Lessee may terminate this Lease upon thirty (30) days’ prior

written notice to Lessor. If any of the foregoing approvals are not obtained by Lessee, Lessee may terminate this Lease by providing written notice to Lessor of Lessee's election to do so prior to receipt of all of the foregoing approvals.

The Leased Premises may be used for private/special events, offices, storage and used ancillary to Lessee's business provided they are not disruptive to airport operations. The Leased Premises may not be used for any other purposes unless approved in writing by the Lessor.

- B. PROHIBITED USES. The Lessee shall not use or permit the use of the Leased Premises or any part thereof for any purpose or purposes other than those set forth in this Lease, unless approved in writing by the Lessor such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall not commit or suffer to be committed any waste in or upon the Leased Premises or maintain any public or private nuisance, nor, without limiting the generality of the foregoing, shall the Lessee use or permit the use of the Leased Premises for any illegal, improper, immoral, or unlawful purposes.
- C. INGRESS AND EGRESS. Lessee shall have at all times the full and free right of ingress and egress over, across and through the Leased Premises and the Airport. Such right also extends to persons or organizations supplying materials or furnishing services to Lessee, as well as employees, customers, guest, and other invitees, who include vehicles, machinery, and equipment reasonably required by such persons or organizations. Lessor shall work with Lessee to increase current parking availability to thirty to forty parking spaces on the Leased Premises.

PART SIX OBLIGATIONS OF AGREEMENT

- A. NET LEASE. The use and occupancy of the Leased Premises by Lessee shall be without cost or expense to Lessor. This Agreement shall be without cost to the City except for the City's obligations set forth or specifically provided elsewhere herein. The Lessee accepts the Leased Premises in its "As Is, Where Is" condition except with regards to items or duties which are expressly agreed to and set forth in writing by Lessor. Lessee shall keep and maintain the Leased Premises as set forth in PART SIX (B), pay all taxes in accordance with PART THREE, pay all casualty, liability and other insurance premiums as set forth in PART SIX (J), and satisfy all of its other obligations under this Agreement.
- B. MAINTENANCE BY LESSEE. Lessee shall be responsible for the following maintenance and repair to the Leased Premises:
 - 1. All upkeep, repair, and maintenance of the Leased Premises including but not limited to interior walls, doors, locks, windows, flooring, fixtures, ceilings, roofs, lighting, electrical and plumbing systems, all heating, air conditioning and heating systems.
 - 2. Lessee's responsibilities under this section shall also include all other internal, external, and supporting structures and equipment;

3. Upon occupation of the Leased Premises, maintain current landscaping in the area of the Leased Premises, Exhibit A.
4. Lessee will not store or dispose of any debris or waste materials on Airport property, except by means of waste receptacles or containers authorized by Lessor;
5. Lessee shall comply with all federal, state, and local fire codes and regulations. Lessee shall also provide and maintain hand-operated fire extinguishers for the interior of the building in accordance with applicable safety codes;
6. Lessee will comply in all aspects with the City of Kissimmee Code including all planning, zoning, and building codes, regulations, and ordinances. Lessor warrants that the intended use is compliant as to the City's land use and zoning codes.
7. If such reasonable maintenance is not completed within a reasonable time period, the Lessor shall have the right to perform such reasonable maintenance upon written notice to Lessee, and Lessee shall reimburse Lessor for the cost of such reasonable maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with PART FOUR above.
8. Notwithstanding anything to the contrary in this Lease, in no event shall Lessee be obligated to make any structural improvements, repairs or replacements or complete any other improvements, repairs or replacements that would ordinarily be considered a capital expenditure under generally accepted accounting principles (collectively, "**Structural/Capital Repairs**") during portion of the Term that Lessee does not own the Hangar, except to the extent such Structural/Capital Repairs arise from alterations being completed by Lessee. From and after the date that Lessee acquires the Hangar pursuant to the Purchase Option, if it does, this Section 6.B.8 shall be deleted and of no further effect.
9. From and after the date that Lessee acquires the Hangar pursuant to the Purchase Option, if it does, Cirrus may alter, remodel or demolish any Lessee owned Improvements without any consents or approvals from Lessor. Maintenance of such owned improvements will thereafter be at Lessee's discretion but in compliance with applicable federal, state, and local fire codes and regulations.
10. If Lessee does not complete any required maintenance or repairs pursuant to the terms of this Lease and Lessee is not taking commercially reasonable efforts to cure such condition within thirty (30) days after Lessor delivers written notice of such failure to Lessee, Lessor shall have the right to perform such reasonable maintenance, and Lessee shall reimburse Lessor for the reasonable cost of such maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with PART FOUR above.

11. Lessee agrees that upon the expiration of the term of this Agreement or sooner termination thereof, the Leased Premises shall be delivered to Lessor in its then existing condition (but subject to Lessee's maintenance obligations herein). Lessor reserves the right upon not less than 48 hours prior notice to Lessee to enter and make periodic inspections of the Leased Premises and improvements thereon during normal business hours. Lessor reserves the reasonable right to enter the Leased Premises during such times as necessitated by an emergency or in order to prevent the occurrence of waste to the Leased Premises and its fixtures, upon reasonable prior written notice to Lessee, unless in the event of an emergency.

C. CONSTRUCTION, ALTERATIONS, REPAIRS.

1. Prior to the date that Lessee acquires the Hangar pursuant to the Purchase Option, if it does, Lessee shall not erect any structures, make any improvements or modifications, or undertake any other construction on the Leased Premises, except as previously set forth, nor shall Lessee alter, modify or make additions, improvements, or repairs to or replace any structure which is existing or built, or install any fixtures other than trade fixtures which are removable without causing permanent injury to the Leased Premises, in each case that will cost in excess of Two Hundred Fifty Thousand Dollars (\$250,000) without prior written approval of the Lessor, such approval not to be unreasonably withhold, conditioned or delayed; provided, however, Lessee may without any Lessor consent complete any (i) alterations, improvements or modifications to the Improvements costing less than Two Hundred Fifty Thousand Dollars (\$250,000), and (ii) cosmetic and other alterations that do not affect the structural components or mechanical, electrical and plumbing systems. After the date that Lessee acquires the Hangar pursuant to the Purchase Option, if it does, Lessee may alter, remodel or demolish any Lessee owned Improvements without any consents or approvals from Lessor.
2. Development and construction will only be permitted in accordance with the guidelines presented in the approved Airport Master Plan. Before commencement of any improvements or modifications to the Leased Premises that require Lessor's consent under Section 6.C.1. above, the Lessee shall submit a written construction application to the Director of Aviation ("**Director**"), and if the Director requests, the construction application shall be in the form as set forth below. The plans for the proposed improvements or modifications to the Leased Premises shall completely describe the function and design and shall also contain the following: upon request,
 - a. A graphic presentation of the improvements showing exact locations of access and egress to and from the Leased Premises, facilities included and interior layouts and plans.
 - b. A basic illustration of the décor of the Leased Premises including construction, furnishings and equipment.

- c. Request for approval of above, to the extent Lessor's consent is required hereunder.
 - d. A schedule for completion of each phase of the improvements.
 - e. proof reasonably acceptable to Lessor that Lessee has complied with Florida Statute, Section 255.05, which requires payment and performance bonds to be in place for work that is occurring on public lands in excess of \$200,000.00.
3. Lessor shall attempt to make a timely disposition of each Lessee Construction Application and, to the extent permitted to approve such work as provided herein, will not arbitrarily or capriciously withhold or condition approval of the same.
 4. Upon approval, if such Lessor approval is expressly required herein, the Lessee shall proceed with the construction, with reasonable diligence and at its sole cost and expense.
 5. Where such alterations or construction has been made, Lessee shall, within (30) days following completion of the alterations, present to Lessor a complete set of "as-built" drawings including, without limitation, plumbing and electrical systems.
- D. UTILITIES. Lessee shall be solely responsible for and pay all charges for utilities for the Leased Premises, including but not limited to all charges pertaining to providing water, sewer, gas, electricity, telephone and internet service. Lessee shall pay utility charges within thirty (30) days of receiving the invoice for said utilities. Lessee will pay all costs of Storm Water fees associated with the paved aircraft parking area. Lessee will pay a proportional cost of any reasonable future fees enacted to cover the cost of utility services.
- E. TRASH AND GARBAGE REMOVAL. Lessee shall maintain the Leased Premises, improvements, and fixtures at all times in a safe, neat, and aesthetically pleasing condition. Lessee shall not permit the accumulation of any trash, ashes, or debris on the Leased Premises and shall remove such debris to a disposal site off the Airport property. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused from its operation. Lessee shall provide and use suitable – covered metal receptacles in an area acknowledged by Lessor for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.
- F. SIGNS. No signs, billboards, flyers shall be erected or maintained by Lessee off the Leased Premises except according to the Lessor's requirements for location and use of signs on Airport property. Lessee may place signs, billboards, flyers on the Leased Premises as determined by Lessee without Lessor's prior written consent. Any required approvals by Lessor pursuant to this Section shall not be unreasonably withheld, delayed or conditioned. Before erection of any sign, billboard or flyer on city property, Lessee must obtain any

applicable permits required by the City.

G. NONDISCRIMINATION. **Exhibit B**, relating to FAA required non-discrimination provisions, is attached hereto and incorporated herein by this reference.

H. HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY LESSEE. Lessee shall handle, use, store, and dispose of hazardous materials, fuel petroleum products, and all other materials, whether hazardous or not, owned or used by Lessee, its agents, contractors, assigns, guests, invitees, or any other person or firm in privity with Lessee on the Airport in accordance with all applicable federal, state, local laws which include but are not limited to Lessor's regulations, rules, and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, the Lessee shall be responsible for the clean-up, containment and otherwise abatement of such contamination at Lessee's sole cost and expense. Further, Lessee shall notify the Lessor and all other appropriate government agencies of such an occurrence immediately after said incidence. Should the Lessee fail to comply with any term contained in this section and Lessee is not taking commercially reasonable efforts to cure such condition within thirty (30) days after Lessor delivers written notice of such failure to Lessee, the Lessor may take any reasonable and appropriate action in the place of Lessee. The Lessee shall promptly pay the full reasonable cost of such remedial action incurred by the Lessor due to noncompliance under this section. Notwithstanding anything to the contrary in this Lease, (i) in no event shall Lessee be responsible for any hazardous materials, fuel petroleum products, or other materials, whether hazardous or not, that exist on the Leased Premises on the Commencement Date, and (ii) Lessee's obligations under this Lease with respect to hazardous materials shall apply only in connection with, and to the extent of, hazardous materials and substances brought onto the Leased Premises by Lessee or Lessee's employees, agents or contractors during the Term.

I. NO LIENS.

1. Except as otherwise provided herein, Lessee shall keep the Leased Premises free from all liens, including, but not limited to, mechanics liens arising from any alteration or construction work performed or labor or materials supplied to the Leased Premises. Any construction work on the Leased Premises authorized by the Lessee shall be performed pursuant to a "no-lien" contract and Lessee shall make certain that the Florida Statutes relating to the "no-lien" contracts are complied with in every particular detail.
2. If, at any time, Lessee shall cause any mechanic's, laborers, or material man's lien to be filed against the Leased Premises or any part thereof, Lessee shall cause the same to be discharged either by record, by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If Lessee fails to cause such liens to be discharged by payment or through appropriate bond within thirty (30) days from

the date Lessee's receives notice of said lien, then such failure should be deemed a default in the performance of this Agreement.

3. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or material man for any specific improvement, alteration to or repair of the Leased Premises, or any part of the Leased Premises.

J. INDEMNITY AND INSURANCE BY LESSEE.

1. Indemnification. Lessee further covenants and agrees to indemnify and hold the City, its members, officers, employees, and agents of each (collectively, "**City Indemnified Parties**"), forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from Lessee's use, occupancy, operation, or maintenance of the Leased Premises, including the work, acts, or omissions of Lessee's officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the negligence or willful misconduct of any of the City Indemnified Parties. The City will refer to Lessee promptly upon notice thereof, any claim made or suit instituted against the City which, in any way, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all reasonable attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Lessee to the City under this Agreement. Any non-appealable final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Agreement but subject to the limitations in Part Six, Section H above, Lessee shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as from time to time amended and the rules and regulations promulgated thereunder) by Lessee or its employees or contractors.

Lessor covenants and agrees to indemnify and hold Lessee, its members, officers, employees, and agents of each (collectively, the "**Lessee Indemnified Parties**"), forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of action

which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the Lessee, or the property of, injury to, or death of any person, resulting or arising from (i) the negligence or willful misconduct of any of the City Indemnified Parties, and (ii) Lessor's use, occupancy, operation, or maintenance of the Airport, including the work, acts, or omissions of Lessee's officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the negligence or willful misconduct of the Lessee Indemnified Parties. Lessee will refer to Lessor promptly upon notice thereof, any claim made or suit instituted against Lessee which, in any way, affects Lessor or its insurer, and Lessor or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessor shall pay all reasonable attorneys' fees and costs incurred by Lessee in its defense of any such action and in the recovery of all amounts owed by Lessor to Lessee under this Agreement. Any final non-appealable judgment rendered against Lessee for any cause for which Lessor is liable hereunder shall be conclusive against Lessor as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Agreement, Lessor shall and hereby does indemnify and hold Lessee harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended) at the Leased Premises before the Commencement Date and on the Airport generally.

2. Lessor Insurance. Lessor shall obtain and keep in force at Lessor's expense during the any portion of the Term in which Lessor owns the Hangar an "all risk – special form causes of loss" policy or policies of insurance covering the full replacement value of the Improvements. Such coverage shall insure against all perils included within the classification of "all risk" fire as such term is used in the insurance industry, including flood coverage to the extent reasonably required. All insurance required to be carried by Lessor may be carried under a blanket policy covering the Leased Premises and other locations.
3. Lessee Insurance. Lessee procure and maintain in effect, at its own expense during the term of this Agreement (i) an "all risk" property policy covering Lessee's personal property on the Leased Premises, (ii) Workers Compensation Insurance as required by Florida Statutes, or adequate Employee's Liability Insurance; Public Liability Insurance; and Property Damage Insurance covering all of Lessee's activities and the Leased Premises at the Airport, and (iii) general liability insurance coverage of \$1,000,000 for each occurrence and over \$2,000,000 general aggregate, as well as the Auto insurance required in the Minimum Standards. In addition, during the any portion of the Term in which Lessee owns the Hangar, Lessee shall obtain and keep in force at Lessee's expense an "all risk – special form causes of

loss” policy or policies of insurance covering the full replacement value of the Hangar.

The Lessee shall maintain such insurance underwriters authorized to do business in the State of Florida reasonably satisfactory to the Lessor. Coverage is to be written on the broadest liability form including but not limited to products liability, blanket contractual, and independent contractors. All liability policies shall include the City of Kissimmee as an additional insured. Lessee shall furnish Lessor with a Certificate of Insurance from the Lessee’s carrier indicating that there is such insurance coverage as hereinbefore provided, and, in the event of a legal dispute and upon request from Lessor, Lessee shall submit to the Lessor, a true copy of the above insurance coverage. Lessee shall provide not less than five (5) days written notice to Lessor before Lessee’s policy or policies of insurance are canceled or materially modified.

4. Waiver of Claims and Subrogation. Notwithstanding anything to the contrary in this Lease, Lessee and Lessor hereby release each other and their respective representatives, agents, employees, and partners from any claims for damage and/or injury to the Leased Premises and/or the Airport or the trade fixtures, personal property, improvements, and alterations in or on or about the Leased Premises or the Airport that are caused by or result from risks that can be insured against under comprehensive “all risk-special form causes of loss” property insurance policies regardless of whether such policies are actually carried.

- K. COMPLIANCE WITH LAW, RULES AND REGULATIONS. Subject to the limitations in Section 6.B.8 above regarding Structural/Capital Repairs, Lessee and Lessor shall each, at its sole expense, observe and comply with the ordinances, statutes, rules, and regulations of all governmental authorities which are applicable to the conduct of each party’s business and in addition, with respect to Lessee, those rules, and regulations of the Lessor not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of such party’s breach of any terms or covenants contained within this Agreement shall be borne by the breaching party. Lessee will ensure the integrity of the Airport perimeter security with respect to the Leased Premises at all times. This includes ensuring all gates to the Leased Premises, to include pedestrian gates, remain locked at all times unless monitored by an employee of the Lessee. Personnel vehicles of Lessee’s employees, customers or contractors will not be parked on the airside.

L. RENOVATIONS.

1. All proposed renovation, refurbishing, alterations, remodeling, and construction that requires Lessor’s consent hereunder shall be in accordance with Part Six of this Agreement, and reviewed and approved by the Director and may also have to be reviewed and approved by the City Building Official, to include obtaining a Building Permit from the City.
2. The parties agree that all renovations, refurbishments, improvements, additions,

fixtures, and alterations to Leased Premises made before Lessee exercises the Purchase Option as provided below shall be deemed to be attached to the freehold and shall become property of the Lessor to the extent as if the Leased Premises and its renovations, refurbishments, improvements, additions, fixtures, and alterations had been erected and installed on the Leased Premises prior to the execution of this Agreement. If Lessee exercises the Purchase Option as provided below, all such renovations, refurbishments, improvements, additions, fixtures, and alterations to Leased Premises shall be conveyed to Lessee on the date of such conveyance.

3. Lessee expressly assumes full responsibility for all damages and injuries that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, alteration, renovation, refurbishment, improvement, or maintenance of any building on the Leased Premises by Lessee, pursuant to or under this Agreement, and shall indemnify Lessor against any and all claims arising from such actions, except to the extent of the negligence or willful misconduct of any of the City Indemnified Parties.

PART SEVEN OBLIGATIONS OF LESSOR

- A. OPERATION AS A PUBLIC AIRPORT. Lessor covenants and agrees that at all times it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.
- B. ENTRY AND INSPECTION. Lessor shall have the right to enter upon and inspect the Leased Premises at any reasonable time, with twenty-four (24) hours' notice during the Term for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The Lessor shall not, during the course of any such inspection, unreasonably interfere with the Lessee's use and enjoyment of or access to the Leased Premises.

PART EIGHT DAMAGE OR DESTRUCTION OF LEASED PREMISES

- A. CASUALTY – LESSOR OWNS HANGAR.
 1. Casualty. If, during the portion of the Term in which Lessor owns the Hangar, the Leased Premises are totally or partially destroyed, rendering the Leased Premises totally or partially inaccessible or unusable, Lessor shall use commercially reasonable efforts to promptly restore the Leased Premises to a condition substantially similar to that which existed immediately prior to such damage or destruction, in accordance with applicable laws ("**Restoration**"). Such destruction shall not terminate this Lease. If the applicable laws do not permit the Restoration of the Leased Premises to a condition substantially similar to that which existed

prior the casualty, Lessee may terminate this Lease by giving notice to Lessor within ninety (90) days after Lessor delivers written notice to Lessee describing the extent to which the Improvements shall be restored in accordance with applicable laws. Notwithstanding anything to the contrary herein, if the casualty cannot be Restored within 120 days after the casualty, as reasonably estimated by Lessor within thirty (30) days after the casualty, or if Lessor fails to provide the restoration estimate to Lessee in writing within thirty (30) days after the casualty, Lessee may terminate this Lease upon written notice to Lessor at any time until Lessor delivers written notice of such estimate and Lessor commences Restoration. If this Lease is not terminated pursuant to the terms of this Section 8.A.1, Lessor shall promptly commence and diligently Restore the Leased Premises. If such Restoration is not completed within 120 days after the date of the casualty, Lessee may terminate the Lease upon written notice delivered to Lessor at any time until Lessor completes the Restoration.

2. Extent of Lessor's Obligation to Restore. If Lessor is required or elects to Restore the Leased Premises as provided in Section 8.A.1, Lessor shall not be required to Restore Lessee's trade fixtures or Lessee's personal property or equipment.
3. Effect of Termination. If this Lease is terminated following a casualty pursuant to this Section 8.A, (i) Lessor shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring Lessor resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring Lessee, and (ii) Lessee shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring Lessee resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring Lessor.
4. Abatement of Base Rent. During any period when Lessee cannot reasonably use all or any portion of the Leased Premises for the conduct of Lessee's business by reason of a casualty, Annual Rent shall be equitably abated in proportion to the degree of such interference. Such abatement shall commence upon the date of the casualty and shall end upon the sixtieth (60th) day following delivery of the affected portion of the Leased Premises with the Restoration complete (or termination of this Agreement as provided herein), it being agreed that Lessee shall be permitted sixty (60) days after such delivery to install its furniture, fixtures and equipment. Lessee shall not be entitled to any compensation or damages from Lessor for loss of the use of the Leased Premises, Lessee's personal property, alterations or other damage or any inconvenience occasioned by a casualty or by the repair or restoration of the Leased Premises thereafter.

B. CASUALTY – LESSEE OWNS HANGAR.

1. Casualty. If, during the portion of the Term in which Lessee owns the Hangar, the Leased Premises are totally or partially destroyed, rendering the Leased Premises totally or partially inaccessible or unusable, Lessee in its sole discretion may elect

to (i) Restore the Leased Premises, (ii) raze the Hangar and clear the affected portion of the Leased Premises and seed such area with grass, (iii) construct new improvements in a configuration determined by Lessee and approved by Lessor in its reasonable discretion, or (iv) if the estimated period to complete the Restoration exceeds 120 days, terminate this Lease; provided that if Lessee elects such termination, Lessee shall either Restore pursuant to clause (i) or raze the Hangar pursuant to clause (ii) prior to the date of such termination. If Lessee elects to proceed under clauses (i), (ii) or (iii), Lessee shall use commercially reasonable efforts to promptly commence and use diligent efforts to complete such action.

2. Effect of Termination. If this Lease is terminated following a casualty pursuant to this Section 8.B, (i) Lessor shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring Lessor resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring Lessee, and (ii) Lessee shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring Lessee resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring Lessor.
3. Abatement of Base Rent. During any period when Lessee cannot reasonably use all or any portion of the Leased Premises for the conduct of Lessee's business by reason of a casualty, Annual Rent shall, to the extent Lessee is using commercially reasonable efforts Restore or otherwise construct new improvements on the Leased Premises, be equitably abated in proportion to the degree of such interference. Such abatement shall commence upon the date of the casualty and shall end upon the date the Leased Premises is Restored or other replacement improvements have been completed (or termination of this Agreement as provided herein). If Lessee elects to raze the Hangar pursuant to Section 8.B.1 above, Annual Rent shall be abated as provided herein until such election is made by Lessee. Lessee shall not be entitled to any compensation or damages from Lessor for loss of the use of the Leased Premises, Lessee's personal property, alterations or other damage or any inconvenience occasioned by a casualty or by the repair or restoration of the Leased Premises thereafter.

PART NINE

TERMINATION OF AGREEMENT, ASSIGNMENT, AND TRANSFERS

- A. TERMINATION. This Agreement shall terminate without action by either party at the end of the Term.
- B. TERMINATION BY LESSEE. Lessee may terminate this Agreement after:
 1. Material default by Lessor in the performance of a covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of sixty (60) days after receipt of written notice of default from Lessee. Unless Lessor is diligently attempting to remedy such default in which

case Lessor shall be allowed such reasonable time as may be required.

2. Upon Lessee giving ninety (90) days written notice to the Lessor pursuant to PART ELEVEN (G) of this Agreement and immediately upon or after the occurrence of any of the following events:
 - a. The failure or refusal of the Federal Aviation Administration (FAA) to permit the Lessee to operate into, from, or through the Kissimmee Gateway Airport during which time rent will abate;
 - b. The duly enactment and implementation of a City, State, or Federal law, order, rule or regulation which is directly binding on the Leased Premises and the operation of the Lessee which directly results in (i) the inability of the Lessee to use or access the Leased Premises in a manner substantially similar to that which existed prior to such interference, or (ii) loss of any of the use classifications in Section 5.A., in either case, for a period longer than one hundred eighty days (180) days during which time rent will abate;
 - c. If Lessee (or an affiliate thereof) does not enter into the Phase II Lease pursuant to the Option Agreement on before expiration of the Option Agreement;
 - d. If the Phase II Lease is terminated at any time prior to completion of the initial improvements to be constructed by the lessee thereunder;
 - e. If the lessee under the Phase II lease does not obtain a certificate of occupancy following completion of the initial improvements to be constructed by the lessee thereunder.

If this Lease is terminated pursuant to this Section 9.B.2 and Lessee has acquired the Hangar pursuant to the Purchase Option below, concurrently with the termination of this Lease, Lessor shall purchase the Hangar back from Lessee in its then current condition for the purchase price Lessee paid to Lessor under the Purchase Option plus the costs of any alterations, additions or improvements made to the Improvements by Lessee during the Term. On the date Lessor pays such purchase price to Lessee, Lessee shall deliver a bill of sale to Lessor therefor (without any representations or warranties but free of any monetary liens created by Lessee).

- C. EXERCISING LESSEE'S RIGHTS OF TERMINATION. Lessee may exercise such right of termination by written notice to Lessor at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the Lessor.
- D. TERMINATION BY LESSOR. Lessor may terminate this Agreement in the event Lessee shall:

1. Be in arrears in the payment of the whole or any part of the rent or other fees, payments, or sums due under this Lease for a period of sixty (60) days after written notice and the time such payments become due;
2. Make a general assignment for the benefit of creditors;
3. File a voluntary or involuntary petition in bankruptcy;
4. Abandon the Leased Premises;
5. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor of said default, unless Lessee is diligently attempting to remedy such default in which case Lessee shall be allowed such reasonable time as may be required;
6. Appoint or to cause the appointment of a receiver for Lessee; or
7. Violate local, state, federal, or Lessor's laws, statutes, ordinances, rules, and regulations not inconsistent with the provisions of this Agreement and such default continues for a period of sixty (60) days after receipt of written notice from Lessor of said default, unless Lessee is diligently attempting to remedy such default in which case Lessee shall be allowed such reasonable time as may be required.

If this Lease is terminated pursuant to this Section 9.D, and Lessee has acquired the Hangar pursuant to the Purchase Option Below, concurrently with such termination of this Lease, Lessor shall purchase the Hangar back from Lessee in its then current condition for the purchase price Lessee paid to Lessor under the Purchase Option plus the costs of any alterations, additions or improvements made to the Improvements by Lessee during the Term, less the direct and actual damages suffered by Lessor as a result of Lessee's breach hereunder. On the date Lessor pays such purchase price to Lessee, Lessee shall deliver a bill of sale to Lessor therefor (without any representations or warranties but free of any monetary liens created by Lessee).

- E. WAIVER OF STATUTORY NOTICE TO QUIT. In the event Lessor exercises its option to terminate this Agreement upon the happening of any of the events set forth in Section D of this Article, Termination by Lessor, a notice of termination shall be sufficient to terminate this agreement. Upon such termination, Lessee agrees that it will forthwith surrender possession of the Leased Premises to Lessor. Lessee will be given access to Leased Premises to remove its property following termination.
- F. SUBLETTING AND ASSIGNMENT. Lessee may not rent or sublease the Leased Premises without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessor may not withhold consent if the proposed assignment or sublease otherwise satisfies any minimum requirements contained in the Service Standards or other similar standards applicable at

the Airport. Lessee may, with the prior written consent of Lessor, assign this Agreement; in such event, Lessee shall remain liable to Lessor for the remainder of the term of the Agreement to pay to Lessor any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the Lessor, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

Notwithstanding anything to the contrary in Section 9.F, Lessee shall have the right without obtaining Lessor's consent, to assign the Lease, to sublet the Leased Premises or otherwise transfer Lessee's interest under the Lease to: (i) any parent, affiliate or subsidiary entity of Lessee, (ii) any entity resulting from a merger, consolidation, spin off or split up involving Lessee or its parent entity, if any, (iii) any person or entity acquiring substantially all of the assets or stock of Lessee, (iv) in connection with an initial public offering, or (v) to any third party acquiring the Hangar following Lessor's failure to exercise its right of first offer in Section 14 below. Any such transfer shall not be subject to the foregoing provisions of Section 9.F, be prohibited or require Lessor's consent; provided, however, in no such event shall any such transfer affect the continuing primary liability of the assigning party (which, following assignment, shall be joint and several with the assignee(s)), or relieve assigning party of any of its obligations under this Lease). Promptly following a permitted transfer, Lessee shall deliver to Lessor a copy of the agreement by which a transferee (other than Lessee) agrees to assume all liabilities of the Lessee under this Lease arising and relating to periods after such transfer.

- G. **MORTGAGES.** Lessee shall at all times and from time to time have the right to encumber by mortgage, deed of trust, or security agreement (the "**Mortgage**") Lessee's leasehold estate in the Leased Premises, together with Lessee's rights and interests in the Improvements, including all rents, issues, profits, revenues, and other income to be derived by Lessee therefrom, to secure such loans from time to time made to Lessee; provided, however, that such Mortgage shall in no event encumber Lessor's fee title or leasehold interest (as applicable) in the Leased Premises or Lessor's interest under this Lease.

PART TEN RIGHTS UPON TERMINATION

- A. **LEASED PREMISES.** It is the intent of this Agreement that the Leased Premises shall be and remain the property of Lessor during the entire term of this Agreement and thereafter.
- B. **REMOVAL OF PERSONAL PROPERTY.** Upon the expiration or termination of this Agreement, all buildings, improvements, and fixtures constructed or placed upon Leased Premises shall revert, free and clear of any mortgage or lien, to Lessor. Lessee shall at all times have the right to remove any of its office supplies, goods, furniture, machinery, equipment, signs and any other personal property installed on the Leased Premises by Lessee, but shall repair at its own expense all damage caused by such removal. Any such personal property not removed by Lessee within such time shall become the property of the Lessor.

PART ELEVEN GENERAL PROVISIONS

A. LESSOR'S RESERVED RIGHTS.

1. City reserves the right: (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, and provided that City shall use reasonable efforts to preserve Lessee's rights hereunder, City shall be free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned by the making of such improvements, repairs, alterations and additions, unless such loss or damages are caused by the negligence or willful misconduct of the City, (ii) to establish such fees and charges for the use of the Airport by Lessee (excluding any additional charge for the use of the Leased Premises) and all others similarly situated from time to time as City may deem advisable, and (iii) for itself and others to utilize and maintain any utility and drainage easements located on the Leased Premises, and (iv) to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Leased Premises and to grant necessary utility easements therefore, provided that in the exercise of any of the foregoing rights, Lessee's use of and access to the Leased Premises and any Improvements, including but not limited to the Hangar, shall not be unreasonably impaired and any damage to the Leased Premises or any Improvements and the Hangar caused by City as a result thereof shall be repaired without cost to Lessee.
2. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the terms relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be reimbursement to Lessor for federal funds for the development of the Airport.

- B. NON-INTERFERENCE WITH OPERATION OF AIRPORT. Lessee by accepting this Agreement expressly agrees for itself and its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event this covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the reasonable expense of Lessee.

Lessor shall maintain and keep in repair the landing area of the Airport and shall have the right to direct and control all activities of the Lessee in this regard.

C. NONEXCLUSIVE RIGHT.

The Lessee expressly agrees, on behalf of itself and its successors and assigns that to the extent it has any rights under this Agreement to conduct any activity on the Airport property, such rights are nonexclusive and City has reserved the right to grant similar rights

to others at the Airport. The provisions of this subsection shall not confer any rights on Lessee which have not been expressly granted to Lessee elsewhere in this Agreement.

- D. WAIVER OF JURY TRIAL, VENUE. It is mutually agreed by and between Lessee and Lessor 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. Venue of all actions shall be Osceola County, Florida.
- E. TAXES, LICENSES, AND PERMITS. Unless otherwise exempt, Lessee shall pay all personal property taxes which may be assessed against merchandise, or other personal property belonging to the Lessee located on the Leased Premises, or other permitted portions of the Airport. In the event any real estate taxes are assessed against the land or improvements on the Leased Premises during the term of this Agreement, such taxes shall be paid by Lessee. Lessee shall obtain and pay for all license, permits, fees, or other authorization or charges as required under federal, state, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.
- F. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- G. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted, such notice shall be served by Certified or Registered Mail with return receipt or by nationally recognized overnight carrier, addressed to the Lessor in following manner:

Director of Aviation
Kissimmee Gateway Airport
401 Dyer Boulevard
Kissimmee, FL 324741-4613

and notices, consents and approvals to addressed to Lessee in the following manner:

Cirrus Design Corporation
4515 Taylor Circle
Duluth, MN 55811
Attn: Legal Department

or such other addresses as the parties may designate to each other in writing.

- H. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- I. SUCCESSORS AND ASSIGNS. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

- J. AMERICANS WITH DISABILITIES ACT. As used herein, “ADA” shall mean the Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), as amended from time to time, and the regulations promulgated thereunder. Lessor hereby represents and warrants that the Improvements comply with ADA on the Commencement Date. Thereafter, Lessee shall be responsible for any actions required to comply with ADA (including, without limitation, any actions required by the City to enable the City to meet its ADA obligations with respect to Lessee’s operations) as a result of (i) any Improvements or modifications which it makes to the Leased Premises, (ii) its particular use of the Leased Premises (as opposed to mere occupancy), and (iii) subject to any other limitations in this Lease (including Section 6.B.8), any changes to the ADA after the Effective Date. Any modification to the Leased Premises, which Lessee is required to make under this Section, shall be performed in accordance with applicable laws. In the event the Lessee shall fail to construct or modify any Improvements to the Leased Premises as required under this Section, the City shall have the right to enter the Leased Premises and perform such modifications on the Lessee’s behalf, without liability for any disruption to the Lessee’s activities therein during the completion of or as a result of such modifications, and the reasonable cost of such modifications shall be invoiced to the Lessee and shall be promptly paid by the Lessee to the City as additional Rent hereunder.
- K. ATTORNEY FEE PROVISION. In the event that any proceeding at law or in equity arises hereunder or in connection herewith (including any appellate proceeding or bankruptcy proceeding) the prevailing party shall be awarded costs, reasonable expert fees and reasonable attorney’s fees incurred in connection therewith.
- L. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- M. PUBLIC ENTITIES CRIME NOTICE. The Lessee acknowledges the following notice:
- 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 \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.
- N. BROKER LANGUAGE. City and Lessee represent and warrant to each other that they have dealt with no broker in connection with this Agreement and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.

- O. ESTOPPEL PROVISION. At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to the best of the responding party's knowledge, the requesting party is not in default under this Agreement (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Agreement and the relationship between City and Lessee as may reasonably be requested. In addition, at the City's request, Lessee shall promptly execute and return to City a short form memorandum of this Agreement which may be recorded in the public records of Osceola County, Florida in City's sole discretion.
- P. ENGINE RUNUPS. Except to the extent that noise restrictions of any governmental City having jurisdiction thereover may preclude or limit the same, Lessee shall have the right to conduct engine runups at the Leased Premises, and/or the nonexclusive right in common with others, to conduct engine runups on the Airport at such location or locations as City may designate from time to time for such purposes, in reasonable proximity to the Leased Premises on the Airport, and subject to the reasonable rules and regulations of City.
- Q. EFFECTIVE DATE. The Effective Date shall mean the date that the last party fully executes this Agreement.

PART TWELVE ENVIRONMENTAL MATTERS

- A. STORAGE TANKS.
1. Lessor hereby represents and warrants that any above and underground storage tanks existing on the Leased Premises on the Commencement Date comply with all applicable federal, state, and local government regulations relating thereto. From and after the Commencement Date, Lessee shall (subject to Lessor's representation and warranty herein), agrees to comply with all applicable federal, state, and local government regulations regarding above and underground storage tanks existing on the Leased Premises on the Commencement Date and as hereafter may be enacted or amended. Specifically, Lessee agrees that all regulated above or underground storage tanks owned or operated by it and located on the Leased Premises or which might discharge on or under the Leased Premises, shall be registered with the appropriated federal, stated, and local authorities; shall be constructed of approved materials; shall, if existing, be appropriately retrofitted pursuant to current federal, state, and local requirements; shall have an approved method of leak detection; and shall be made available for compliance inspection at all times during normal business hours. ("Approved" for purposes of this provision shall mean: "determined to meet applicable federal and state environmental regulatory requirements.") Further, Lessee agrees to properly record, maintain, and reconcile all inventory record required by appropriate federal, state, and local regulations and to make such records available for inspection at the Leased Premises during normal

business hours upon not less than 48 hours prior notice from Lessor.

2. Lessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. 280 by obtaining at least one million dollars (\$1,000,000.00) of third-party liability insurance and one million dollars (\$1,000,000.00) of restoration (cleanup) insurance as coverage for all petroleum storage tank activities conducted by Lessee on or adjacent to the Leased Premises. Such insurance must be maintained in effect during the entirety of the term of this Agreement and proof of such insurance must be provided to Lessor prior to the operation or installation of any regulated above or underground petroleum storage tanks on or about the Leased Premises. This insurance requirement may be satisfied by qualification for and compliance with the Florida Petroleum Liability Insurance and Restoration Program as established by Section 376.3072, Florida Statutes.

- B. INDEMNIFICATION. Lessor agrees to indemnify and hold the Lessee Indemnified Parties harmless from and against all liabilities, claims, judgment, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from any Hazardous Materials existing on the Leased Premises as of the Commencement Date or the failure of any above or underground storage tanks existing on the Leased Premises on the Commencement Date to comply with all applicable federal, state, and local government regulations relating thereto.

C. HAZARDOUS MATERIALS COVENANTS.

1. Lessee hereby represents and warrants to and for the benefit of Lessor that Lessee shall dispose of any Hazardous Materials (hereinafter defined) placed upon the Leased Premises or any portion thereof by Lessee during the Term in accordance with all applicable Laws (as defined below) so as to prevent Hazardous Materials Contamination. From purposes hereof the term "Hazardous Materials" shall mean and refer to (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. *6901 et seq.), as amended from time to time, and regulations promulgated thereunder, (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 24, *6901, et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the Leased Premises is prohibited by the City that the Leased Premises will not use or operated in any manner that will result in the storage use treatment, manufacture, or any applicable environmental laws or regulations ("Laws") or by any other legal requirements affecting the Leased Premises; (viii) petroleum-based materials (with the exception of tires affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any laws or by any other legal requirements affecting the Leased Premises. The term "Hazardous Materials

Contamination” shall mean and refer to the contamination of the Leased Premises, soil, surface water, ground water, air, or other elements on or off the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials placed on the Leased Premises by Lessee during the Term emanating from the Leased Premises at any time.

2. In addition to and without limiting the generality of any other provisions of this Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any damages, expenses, fees, claims, demands, causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys’ fees and costs of litigation, and costs and expenses of response, remedial, and corrective work and other cleanup activities, arising out of or in any manner connected with (i) the “release” or “threatened release” (as those term are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Lessee or Lessee’s employees, agents, delegates, invitees, licensees, concessionaires, contractors, or representatives, of any Hazardous materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises caused solely by Lessee. Notwithstanding anything to the contrary int his Lease, (1) in no event shall Lessee be responsible for any Hazardous Materials, fuel petroleum products, or other materials, whether hazardous or not, that exist on the Leased Premises on the Commencement Date, and (2) Lessee’s obligations under this Lease with respect to Hazardous Materials shall apply only in connection with, and to the extent of, hazardous materials and substances brought onto the Leased Premises by Lessee or Lessee’s employees, agents or contractors during the Term. The provisions of this Section shall survive any acquisition of the Leased Premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, liabilities, and all losses.
3. Lessor shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists prior to the Commencement Date. The Parties hereby acknowledge that City shall conduct a Phase I report of the Leased Premises, prior to October 1, 2021. The Lessee shall not be obligated to take possession of the Leased Premises, until completion of the Phase I, and any remediation work identified by this report or a Phase II report has been completed by Lessor. The Phase I conducted shall act as the “Baseline” to establish the environmental condition of the Leased Premises at the time of the commencement of possession by Lessee. For the purpose of this Lease, “Environmental Problem” shall mean any (i) contamination of the Leased Premises, soil, surface water, ground water, air or improvements on the Leased Premises prior to the Commencement Date, (ii) any failure of the Leased Premises to comply with all applicable laws, including environmental Laws, and (iii) any recognized environmental condition identified in the Phase I to be conducted by Lessor as provided herein.

4. Within thirty (30) days of the expiration of this Agreement, Lessor shall prepare an environmental report equivalent to Phase I and, if the results of the Phase I reasonable demonstrate a need for one, a Phase II, to include borings to establish the environmental condition of the Leased Premises as of expiration of the Agreement. In the event it is determined that Lessee released pollutants onto the Leased Premises during Term (by comparison to the Baseline) in amounts which violate any applicable Federal, State or local governmental standards, Lessee shall be responsible for any and all action reasonably necessary to remediate such condition in accordance with applicable Laws.

PART THIRTEEN PURCHASE OPTION

- A. PURCHASE OPTION. Subject to and in accordance with the terms of this Section 13, Lessee shall have the option to purchase the Hangar (the “**Purchase Option**”) for a purchase price of One Million Five Hundred Ninety Thousand and 00/100 Dollars (\$1,590,000.00) (the “**Purchase Price**”).
- B. EXERCISE OF PURCHASE OPTION. Lessee may exercise the Purchase Option at any time on or before October 1, 2026, by delivering written notice to Lessor of Lessee’s intent to exercise the Purchase Option. Lessee’s notice to Lessor exercising the Purchase Option shall be referred to herein as “**Lessee’s Option Notice**”.
- C. TITLE AND SURVEY REVIEW. For a period of seventy-five (75) days after Lessee’s Option Notice (the “**Due Diligence Period**”), Lessee may complete any physical inspections of the Hangar, and obtain, at its expense, a current title commitment from a title company selected by Lessee (the “**Title Company**”) and survey for the Leased Premises. Prior to the end of such seventy-five (75) day period, Lessee may make written objections as to the current status of title or to the contents of the survey (“**Lessee’s Objection Notice**”), except that Lessee may not object to any exceptions created by Lessee during the Term. Within ten (10) days of Lessor’s receipt of Lessee’s Objection Notice, Lessor shall notify Lessee, in writing, whether or not it intends to correct the deficiencies contained in Lessee’s Objection Notice (“**Lessor’s Objection Response**”); provided, however, that Lessor shall not have any obligation to remove any exceptions to title except for mortgages, mechanics, tax and judgement liens and any other monetary liens created by or through Lessor (collectively, “**Monetary Liens**”). For Monetary Liens and those matters that Lessor elects to cure pursuant to Lessor’s Objection Response, Lessor shall have thirty (30) days to remove such items or cause such items to be removed at or prior to Closing. If Lessor does not elect in Lessor’s Objection Response to cure all of the deficiencies specified in Lessee’s Objection Notice or if Lessor does not cure all Monetary Liens or any deficiencies that Lessor elected in Lessor’s Objection Notice to cure within thirty (30) days after Lessor’s Objection Response, then in either such event Lessee may elect to: (i) waive such deficiencies and proceed to Closing; (ii) withhold from the Purchase Price an amount sufficient to remove such objection from title (or for Title Company to insure over such objection), or (iii) terminate the Purchase Option upon written notice to Lessor, in which case this Lease shall expire on the later of the last day of the originally scheduled Term or thirty (30) days after the date Lessee delivers such termination notice.

In addition to the foregoing, if Lessee determines that the Hangar is unsuitable for Lessee's purposes during the Due Diligence Period, Lessee may rescind Lessee's Option Notice (and not purchase the Hangar) by delivering written notice of such election to Lessor prior to the expiration of the Due Diligence Period.

- D. **CLOSING.** The closing ("**Closing**") shall take place at the offices of the Title Company thirty (30) days after the expiration of the Due Diligence Period (the "**Closing Date**"). The Closing shall be an escrow closing so each party will deliver any applicable closing documents and funds to the Title Company on or before the Closing Date. At Closing, Lessor shall deliver (i) warranty bill of sale for the Hangar and a Declaration of Severance (severing the Hangar from Lessor's fee interest on the underlying land), each in form and substance reasonably acceptable to Lessee, (ii) a certificate indicating that, on the Closing Date: (A) there are no outstanding Monetary Liens (other than those to be paid at Closing), or bankruptcies against or involving Lessor and the Hangar; (B) there has been no skill, labor or material furnished to the Hangar at Lessor's request for which payment has not been made and for which mechanics' liens could be filed; (C) Lessor has no knowledge of any unrecorded easements, leases, licenses, or other agreements granting a party the right to use, occupy or acquire all or any portion of the Hangar or the Leased Premises, including purchase rights or options; and (D) affirming any other matters reasonably necessary for the Title Company to remove the "standard exceptions" from Lessee's policy of title insurance, if Lessee so chooses to obtain one, and (iii) a FIRPTA certificate. Concurrently with the Closing, Lessee may assign the Purchase Option to any designee.
- E. **PRORATIONS.** Lessee shall pay all real estate taxes and installments or special assessments that Lessee is obligated to pay under this Lease and that are otherwise due and payable in the year of Closing and thereafter. Lessee shall receive a credit at Closing for all Hangar Rent paid through Closing. Lessor shall pay any transfer or sales taxes and for one-half of any closing costs charged by the Title Company. Lessee shall pay for the cost to record the Declaration of Severance, any premiums to obtain a leasehold title policy, and one-half of any costs charged by the Title Company. Any other closing costs shall be paid and allocated in accordance with local custom. If Lessor fails to close as required herein, Lessee may, in addition to any other remedies provided at law or equity, rescind its Purchase Option or pursue specific performance.

PART FOURTEEN RIGHT OF FIRST OFFER

- A. **OFFER NOTICE.** Following Lessee's purchase of the Hangar pursuant to the Purchase Option above, if Lessee desires to sell the Hangar during the Term to a third party which is not affiliated with Lessee, Lessee shall first provide a written notice (the "**Offer Notice**") to Lessor of Lessee's intention to sell the Hangar. The Offer Notice must describe the proposed sales price for the Hangar, and any other material terms and conditions of the proposed sale. Lessor shall have right to purchase the Hangar at the price and upon the terms and conditions stated in the notice, which right may only be exercised by delivering written notice of exercise to Lessee within thirty (30) days after Lessee's delivery of the Offer Notice. If Lessor does not timely exercise its right to purchase the Hangar, then Lessor's right of first offer shall lapse and Lessee shall be free to (i) sell the Hangar to a

third party for not less than 90% of the purchase price or on terms materially more favorable than offered to Lessor, and provided further that if Lessee does propose to sell the Hangar for less than 90% of the purchase price or upon materially more favorable terms, then Lessor's right of first offer as to the Hangar hereunder shall automatically revive, and (ii) assign all of Lessee's right, title and interest under this Lease to such purchaser without Lessor's consent or approval.

- B. EXERCISE OF RIGHT. If Lessor timely and properly exercises its right to purchase the Hangar, Lessor and Lessee shall promptly negotiate in good faith and execute a purchase agreement containing the purchase price and other terms and conditions negotiated as set forth in subparagraph A above.

Signature page to follow

IN WITNESS THEREOF, the parties now sign, agree to, and enter into this Agreement on the day and year first above written.

CIRRUS DESIGN CORPORATION

By: [Signature]
 Name: Ravi Dhanidharka
 Its: Senior Vice President

State of Tennessee
 County of Blount)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 9th day of September, 2021, by Ravi Dhanidharka as Vice President of Cirrus Design Corporation., a corporation organized under the laws of the State of Wisconsin, who is ☒ personally known to me or ☐ who has produced _____ as identification, and acknowledged before me that they executed the foregoing instrument as such officer in the name and on behalf of the corporation.

Seal:



Angela L. Toftey
 Notary Public, State of Tennessee

CITY OF KISSIMMEE, FLORIDA

[Signature]
 Olga Gonzalez
 Mayor-Commissioner

ATTEST:

[Signature]
 City Clerk

Approved as to form and legality

[Signature]
 City Attorney

Exhibit "A"
Leased Premises Exhibit"

The Premises consists of Parcel A and the small triangle portion of land on the following depictions:

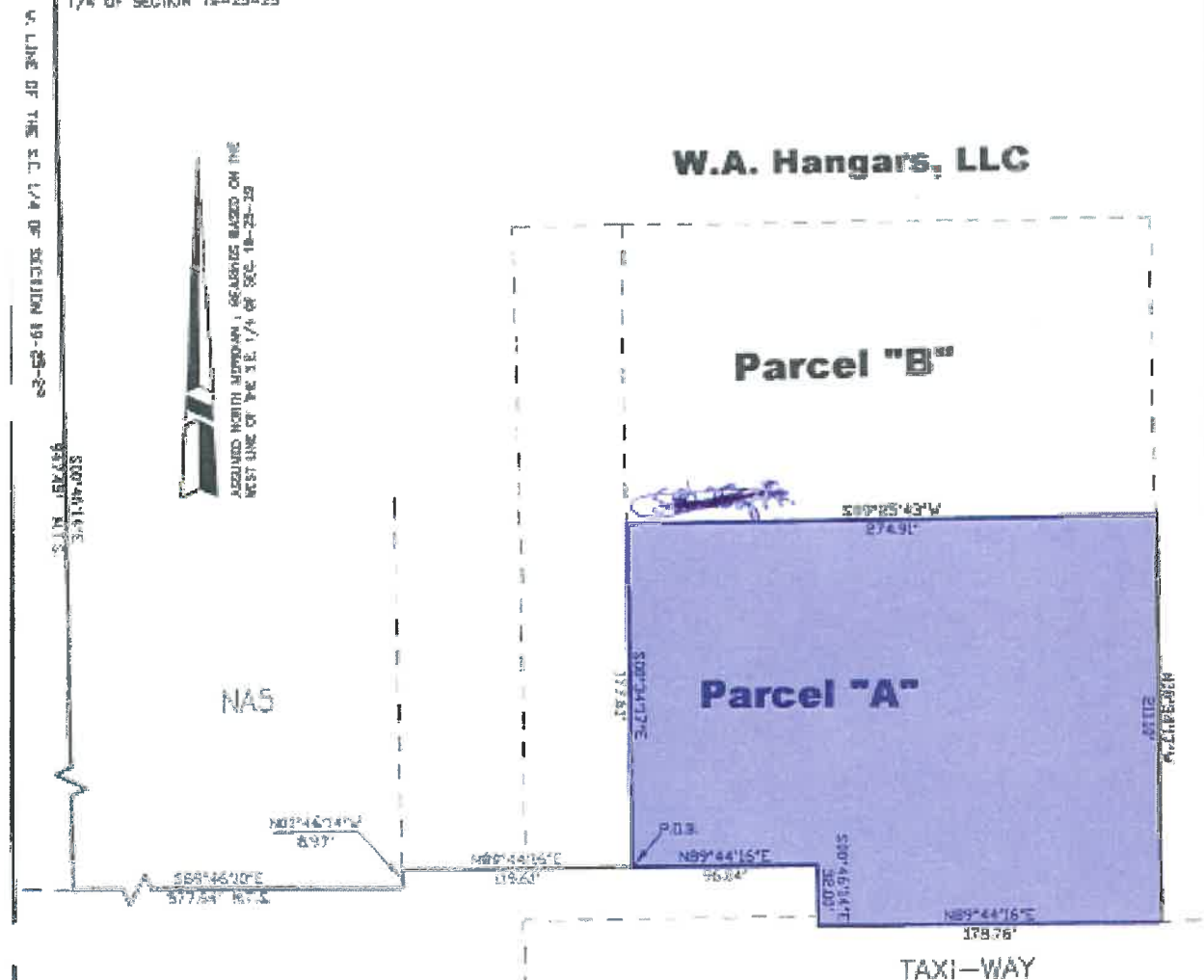
SKETCH OF LEGAL DESCRIPTION

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA; THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET; THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 32.00 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 178.76 FEET; THENCE RUN NORTH 00°34'17" WEST, A DISTANCE OF 211.10 FEET; THENCE RUN SOUTH 89°25'43" WEST, A DISTANCE OF 274.91 FEET; THENCE RUN SOUTH 00°34'17" EAST, A DISTANCE OF 177.61 FEET TO THE POINT OF BEGINNING.

CONTAINING 54,753 SQ. FT. OR 1.26 ACRES, MORE OR LESS.

P.O.B.
N.W. CORNER OF THE S.E.
1/4 OF SECTION 19-25-29



SKETCH OF LEGAL DESCRIPTION (ADDITIONAL LEASE AREA)

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 28 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA; THENCE RUN SOUTH 00°46'14" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 947.45 FEET; THENCE RUN SOUTH 89°46'10" EAST, A DISTANCE OF 577.64 FEET; THENCE RUN NORTH 00°46'14" WEST, A DISTANCE OF 8.97 FEET; THENCE RUN NORTH 89°44'16" EAST, A DISTANCE OF 119.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°44'16" EAST, A DISTANCE OF 96.04 FEET; THENCE RUN SOUTH 00°46'14" EAST, A DISTANCE OF 27.00 FEET; THENCE RUN SOUTH 89°44'16" WEST, A DISTANCE OF 45.00 FEET; THENCE RUN NORTH 62°29'40" WEST, A DISTANCE OF 57.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,904 SQ. FT. OR 0.044 ACRES, MORE OR LESS.

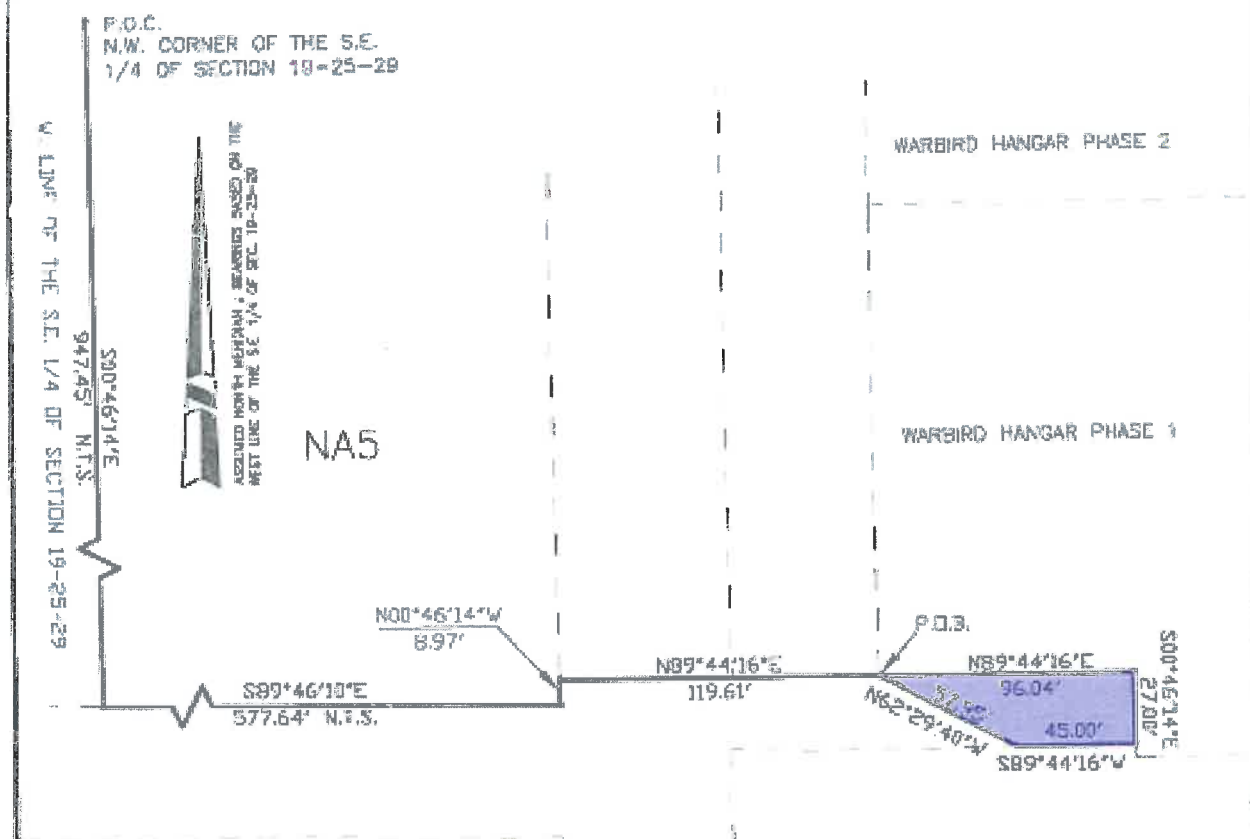


Exhibit “B”
FAA Required Contract Provisions
GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”), agrees as follows, if and to the extent applicable as a matter of law:

Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Lessee, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment:

In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-Lessee or supplier will be notified by the Lessee of the Lessee’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: If and to the extent applicable as a matter of law, the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-Lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, the Aviation City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.
2. In the event of breach of any of the above nondiscrimination covenants, the Aviation City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law, such may be amended from time to time upon thirty (30) days' advanced written notice to Lessee:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (Prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975

and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

Exhibit “C”
Depiction of Hangar





Exhibit “D”
Service Standards

This Exhibit references the Kissimmee Gateway Airport’s -
*Policy, Regulations and Minimum Aeronautical Service Standards for Aeronautical Tenants at
Kissimmee Gateway Airport, latest edition revised March 2014.*

ITEM 7.W

APPROVAL OF A RESOLUTION ESTABLISHING THE CITY'S INTENT TO SECURE TAX-EXEMPT FINANCING TO REIMBURSE THE CITY FOR CAPITAL EXPENDITURES RELATED TO SEVERAL CAPITAL IMPROVEMENT PROJECTS

Request

Approval of a reimbursement Resolution to establish the City's intent to procure future tax exempt financing for capital expenditures in connection with several capital improvement projects.

Explanation

This proposed resolution establishes the City's intent to pursue tax-exempt financing and to utilize those future revenues to reimburse the City for capital expenditures made in advance of that debt issuance. This funding is for several capital improvement projects, including the installation of public infrastructure at the Beaumont Property and the purchase of vehicles and equipment necessary for the Commercial Solid Waste transition project. Adoption of the resolution will allow the City to begin making purchases prior to the issuance of the debt, which is critical given the current supply chain issues affecting the availability of equipment, vehicles, and construction materials.

Finance staff is working with the City's Financial Advisors on the process of securing the financing, which will include a procurement process to consider a variety of financing vehicles, issuers and rates. The final recommendation on the planned debt issuance will be scheduled for City Commission consideration at a later date.

Recommendation

Staff recommends approval of the Resolution.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter:

Attachment(s):

1. Kiss 2021 Reimbursement Resolution 12.15.21

RESOLUTION NO. ____ - 2021

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KISSIMMEE FLORIDA ESTABLISHING ITS INTENT TO REIMBURSE CERTAIN CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH VARIOUS CAPITAL IMPROVEMENT PROJECTS WITH PROCEEDS OF A FUTURE TAX-EXEMPT FINANCING; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KISSIMMEE, FLORIDA:

Section 1. Authority for this Resolution. This Resolution is adopted pursuant to Section 1.150-2 of the Income Tax Regulations which were promulgated pursuant to the Internal Revenue Code of 1986, as amended, the municipal charter of the City of Kissimmee, Florida (the "Issuer") and other applicable provisions of law.

Section 2. Findings. It is hereby ascertained, determined and declared that:

The Issuer has determined that the need exists to incur debt to finance the costs of all or a portion of various capital projects, including, but not limited to, land acquisition and various infrastructure improvements related to lands known as the "Beaumont Development Site," as well as certain commercial solid waste capital needs, all in accordance with plans on file at the offices of the Issuer, as such plans may be modified from time to time (collectively, the "Project")

Section 3. Declaration of Intent. The Issuer hereby expresses its intent to be reimbursed from proceeds of a future tax-exempt financing for capital expenditures to be paid by the Issuer in connection with the Project. Pending reimbursement, the Issuer expects to use funds on deposit in appropriate funds or accounts to pay costs associated with the Project. It is reasonably expected that the total amount of debt to be incurred by the Issuer with respect to the Project will not exceed \$10,000,000. This Resolution is intended to constitute a "declaration of official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations which were promulgated pursuant to the Internal Revenue Code of 1986, as amended, with respect to the debt incurred to finance the costs of all or a portion of the Project.

Section 4. Severability. If any one or more of the covenants, agreements or provisions of this Resolution should be held 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, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Resolution.

Section 5. Repeal of Inconsistent Resolutions. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

Section 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

ADOPTED this 21st day of December, 2021.

Olga Gonzalez, Mayor-Commissioner

ATTEST:

City Clerk

Approved as to Form and Legality:

Olga Sanchez de Fuentes, City Attorney

ITEM 8.A

CITIZEN REQUEST TO ADDRESS THE COMMISSION REGARDING DOWNTOWN HOLIDAY DECORATIONS AND EVENTS

Request

The request is from Carlos Ramirez of Aviles Hair Studio to address the Commission regarding downtown holiday decorations and events.

Explanation

Carlos Ramirez of Aviles Hair Studio requested to address the City Commission regarding downtown Christmas lighting and communication downtown regarding City events.

Recommendation

Staff requests Commission direction.

REQUESTED CITY COMMISSION ACTION:

Commission Direction

Department: City Manager

Presenter:

Attachment(s):

1. Agenda Request

From: Pedro Aviles <avileshairstudio@gmail.com>
Sent: Thursday, November 18, 2021 5:14 PM
To: Samia Singleton <SAMIA.SINGLETON@kissimmee.gov>
Subject: Re: Placed on Agenda to address Commissioner

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

Samia,

Thank you for your quick response. I would like to be placed on the Agenda for December 7, 2021. I would like to discuss the Christmas lighting, Lack of Communication downtown and communication to merchants from City of Kissimmee for events such as Parades etc.

Again Thank you for your quick response.

ITEM 8.B**AFFORDABLE HOUSING INCENTIVES AND RECOMMENDATIONS FROM THE AFFORDABLE HOUSING ADVISORY COMMITTEE (AHAC) FOR THE 2021 CALENDAR YEAR****Request**

Accept the recommended incentive strategies made by the Affordable Housing Advisory Committee (AHAC) during the 2021 calendar year and direct staff to follow up with the implementation of each recommendation accordingly.

Explanation

Pursuant to Chapter 420.9076 F.S. and Rule 67-37.010, all communities that participate in the State Housing Initiatives Partnership (SHIP) program are required to review the established policies and procedures, ordinances, land development regulations, and local government comprehensive plans and recommend initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. This review is carried out by the Affordable Housing Advisory Committee (AHAC) which consists of eleven appointed members. The Committee meets on a monthly basis and at the end they complete an AHAC Incentive Strategies Report.

Below are the recommendations made by the Committee for the consideration of the City Commission to incorporate into the City's housing strategy:

- The City of Kissimmee should develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.
- In order for developments to be eligible for a density bonus of 5%, the City of Kissimmee should require that developments seeking to provide affordable housing to obtain density bonuses must set aside at least 20% of its units as affordable housing. These units must remain affordable for up to 15 years.
- The City of Kissimmee should not include attached Accessory Dwelling Units (ADU) in the density calculations for any of the zoning districts; however, the attached ADU should be included in the calculation for infrastructure for the purpose of calculating mobility fees, impact fees and connection fees. In addition, the City should remove the requirement that the principal structure be owner occupied.
- The City of Kissimmee should adopt a more formal process of ongoing review to consider, before adoption, policies, procedures, ordinances, regulations, or plan provisions that increase the cost of housing. AHAC recommended that staff from the initiating department/division should meet with the housing staff to discuss the impact of the policy on the cost of affordable housing. During the review of the proposed policy or regulation, the housing staff should perform research on the impacts of that policy or regulation on housing cost and provide the results in the form of an impact analysis (Housing Impact Statement) to the AHAC at an upcoming meeting.
- Housing staff should prepare the inventory list of surplus land including only those parcels that are appropriate for affordable housing, and draft guidelines for a Surplus Land for Affordable Housing Program. The program should include guidelines on parcel identification, oversight, disposition procedures, affordability requirements, etc.
- The City should encourage housing developments that meet the definition of either affordable housing or workforce housing and are located near transportation, employment centers,

and/or mixed used development through available funding sources and/or regulatory incentives.

- The City of Kissimmee should evaluate the Community Land Trust model as a potential program for affordable housing in the City of Kissimmee.
- The City of Kissimmee should define affordable housing developments as those in which at least 20% of the units are set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes.

The following incentives were reviewed and the AHAC did not make any recommendations:

- The processing of approvals of development orders or permits for affordable housing projects is expedited to a greater degree than other projects;
- The reservation of infrastructure capacity for housing for very low-income, low-income, and moderate-income persons;
- The reduction of parking and setback requirements for affordable housing;
- The allowance of flexible lot configurations, including zero lot line configurations for affordable housing; and,
- The modification of street requirements for affordable housing.

As required by the statute, the AHAC held a public hearing on Wednesday, December 8, 2021 to approve the recommendations by affirmative vote of a majority of the members.

Frances De Jesus (Staff) will provide a brief introduction of the Affordable Housing Advisory Committee. She will then introduce the AHAC Vice-Chair, Robert Bussiere, and he will make a presentation to the City Commission on the incentive strategies and the AHAC's recommendations.

Recommendation

Accept the recommended incentive strategies made by the Affordable Housing Advisory Committee (AHAC) during the 2021 calendar year and direct staff to follow up with the implementation of each recommendation accordingly.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter: Frances DeJesus

Attachment(s):

1. AHACPresentation_12.21.2021
2. AHAC Report _2021

CITY OF KISSIMMEE

AFFORDABLE HOUSING ADVISORY COMMITTEE

December 21, 2021



Objective

To recommend to City Commission regulatory incentives based on the review of the following:

- Policies and procedures;
- Land development regulations; and,
- Adopted comprehensive plan

Complete an AHAC Incentive Strategies Report annually

AHAC is required to review and evaluate at least 11 specified affordable housing incentives

- Expedited Permitting
- On-going regulatory review process
- Fee waivers for affordable housing
- Surplus Land Inventory
- Density flexibility
- Accessory Dwelling Units
- Reservation of Infrastructure
- Proximity to transportation, employment, and mixed use developments
- Parking and Setback Requirements
- Flexible Lot Configurations
- Street Requirements
- Community Land Trust
- Definition of Affordable and Workforce Housing Developments

Expedited Permitting

Existing Strategy:

A policy and a process are in place in order to process permits for affordable housing developments in an expedited manner to the greatest extent possible.

AHAC Recommendation:

No recommended changes to this incentive at this time.

On-going regulatory review process

Existing Strategy:

The City of Kissimmee has an established process to determine the impact of regulatory changes on affordable housing.

AHAC Recommendation:

Staff from the initiating department/division shall meet with the Housing staff to discuss the impact of the policy on the cost of affordable housing. During the review of the proposed policy or regulation, the housing staff shall perform research on the impacts of that policy or regulation on housing cost and provide the results in the form of an impact analysis (Housing Impact Statement) to the AHAC at an upcoming meeting.

Fee waivers for affordable housing

Existing Strategy:

In lieu of an impact fee reduction or reimbursement, the City of Kissimmee includes in its Local Housing Assistance Plan a strategy that gives developers a financial incentive in the amount of \$20,000 as a contribution to affordable housing projects if they are participating in the Florida Housing Finance Corporation's funding process. In years when SHIP funding was not available the City Commission has waived building permit fees in the amount of \$20,000 as a local government contribution for the construction of affordable housing. However, this is not a standing policy.

AHAC Recommendation:

The City of Kissimmee should develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.

Surplus Land Inventory

Existing Strategy:

The current list, which was reviewed and adopted in 2019, includes all of the parcels of land owned by the City, not just those that are appropriate for the development of affordable housing.

AHAC Recommendation:

Housing staff shall prepare the inventory list of surplus land including only those parcels that are appropriate for affordable housing and to draft guidelines for a Surplus Land for Affordable Housing Program. The program shall include guidelines on parcel identification, oversight, disposition procedures, affordability requirements, etc.

Density flexibility

Existing Strategy:

The Kissimmee City Code allows for a density bonus of 5% if the development sets aside at least 10% of its units as affordable housing. These units must remain affordable for up to 30 years.

AHAC Recommendation:

In order for developments to be eligible for a density bonus of 5%, the City of Kissimmee should require that developments seeking to provide affordable housing to obtain density bonuses must set aside at least 20% of its units as affordable housing. These units must remain affordable for up to 15 years.

Accessory Dwelling Units

Existing Strategy:

Accessory dwelling units are permitted in most zoning districts provided they meet the requirements of the Land Development Code.

AHAC Recommendation:

City of Kissimmee should not include attached Accessory Dwelling Units (ADU) in the density calculations for any of the zoning districts; however, the attached ADU should be included in the calculation for infrastructure for the purpose of calculating mobility fees, impact fees and connection fees. In addition, the City should remove the requirement that the principal structure be owner occupied.

Reservation of Infrastructure

Existing Strategy:

Most developers pay for the impact/mobility fees when they receive a building permit.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Proximity to transportation, employment, and mixed use developments

Existing Strategy:

There is not a strategy to provide financial support of development near transportation hubs at this time.

AHAC Recommendation:

The City should encourage housing developments that meet the definition of either affordable housing or workforce housing and are located near transportation, employment centers, and/or mixed used development through available funding sources and/or regulatory incentives.

Parking and Setback Requirements

Existing Strategy:

A policy and a process are in place in order to process permits for affordable housing developments in an expedited manner to the greatest extent possible.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Flexible Lot Configurations

Existing Strategy:

The Land Development Code already includes flexible lot configurations, including zero lot line development.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Street Requirements

Existing Strategy:

The Kissimmee City Code already addresses modification of street requirements in the city code.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Community Land Trust

Existing Strategy:

There is not a strategy to support community land trusts at this time.

AHAC Recommendation:

The Community Land Trust model shall be evaluated as a potential program for affordable housing in the City of Kissimmee.

Definition of Affordable and Workforce Housing Development

Existing Strategy:

There is not a strategy that defines affordable and workforce housing at this time.

AHAC Recommendation:

The City of Kissimmee should define affordable housing developments as those in which at least 20% of the units are set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes.

Workforce Housing – No separate definition was recommended since housing units set aside for persons earning between 80% to 120% are already included in the above definition.

Motion

- ___ Accept AHAC recommendations
- ___ Do not accept AHAC recommendations

What is next?

- City will submit the Affordable Housing Incentive Strategies Report to the required organizations.
- Staff will implement the accepted recommendations.
- AHAC will continue to meet and review the same eleven incentives, in addition to others that may not be referenced in the statute and provide additional recommendations, if needed.

Comments or Questions?

**AFFORDABLE HOUSING ADVISORY COMMITTEE REPORT TO
CITY OF KISSIMMEE CITY COMMISSION
STATE HOUSING INITIATIVES PARTNERSHIP
AFFORDABLE HOUSING INCENTIVE STRATEGIES**

December 21, 2021

BACKGROUND

As a recipient of State Housing Initiative Partnership (SHIP) funds, City of Kissimmee established an Affordable Housing Advisory Committee (AHAC) on December 1, 2020 as required by Florida Statutes, Sec. 420.9076. The AHAC is responsible for reviewing and evaluating local plans, policies, procedures, land development regulations, the Comprehensive Plan, and other aspects of the City of Kissimmee housing activities that impact the production of affordable housing. Further, the AHAC is specifically directed by the SHIP Statute to consider and evaluate the implementation of the incentives set out in Florida Statutes, Sec. 420.9076 (4)(a)-(k). Based on the AHAC evaluation, it may recommend to local government that it make modifications of, exceptions to, or creation of new plans, policies, procedures, and other governing vehicles which would encourage production of affordable housing.

As approved by the City of Kissimmee City Commission, the recommendations are used to amend the Local Housing Assistance Plan, Land Development Code, and the local Comprehensive Plan.

COMMITTEE COMPOSITION

The City of Kissimmee City Commission appointed or re-appointed members to the Committee on December 1, 2020. Florida Statutes, Sec. 420.9076(2) lists the categories from which committee members must be selected. Each AHAC must have a locally elected official from the county or municipality participating in the SHIP program. The locally elected official must be a City or County Commissioner. The elected official counts as a member of the AHAC for purposes of meeting the number of member's requirements. There must be at least eight committee members with representation from at least six of the following categories:

- (a) A citizen who is actively engaged in the residential home building industry in connection with affordable housing.
- (b) A citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing.
- (c) A citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing.
- (d) A citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing.
- (e) A citizen who is actively engaged as a for-profit provider of affordable housing.
- (f) A citizen who is actively engaged as a not-for-profit provider of affordable housing.
- (g) A citizen who is actively engaged as a real estate professional in connection with affordable housing.
- (h) A citizen who actively serves on the local planning agency pursuant to s. 163.3174. If the local planning agency is comprised of the governing board of the county or

municipality, the governing board may appoint a designee who is knowledgeable in the local planning process.

(i) A citizen who resides within the jurisdiction of the local governing body making the appointments.

(j) A citizen who represents employers within the jurisdiction.

(k) A citizen who represents essential services personnel, as defined in the local housing assistance plan.

The appointed AHAC Committee members are included here, along with their category affiliation:

Name	Category Represented	December 1, 2020
1 Olga Gonzalez	Elected Official	Appointed
2 Nilisa I Council (Chair)	Citizen	Re-Appointed
3 Robert A. Bussiere (Vice-Chair)	Planning Agency Member	Re-Appointed
4 Tyrone Butterfield	Home Builder Labor Affordable Housing	Re-Appointed
5 Will Cooper	Advocate for Low Income	Re-Appointed
6 Scott Culp	For-Profit Provider of Affordable Housing	Re-Appointed
7 Wendy Ford	Non Profit Affordable Housing Provider	Re-Appointed
8 Linda Goodwin	Real Estate Professional	Re-Appointed
9 Jackie Espinosa	Banking/Mtg. Affordable Housing	Re-Appointed
10 Lucie Ghioto	Residential Home Building Industry	Re-Appointed
11 Sue Ring	Representative of Employers	Re-Appointed
12 Bradley Anderson	Representative of Essential Services Personnel	Re-Appointed

RECOMMENDATIONS

The AHAC has reviewed local government plans, policies, and procedures; ordinances; regulations; statutes; and the comprehensive plan, among other documents applicable to affordable housing, for evaluation of their impacts on affordable housing. Further, the AHAC has specifically considered and evaluated the strategies set out in Florida Statutes, Sec. 420.9076 (4)(a)-(k). Based on this review and evaluation, the AHAC has formulated recommendations to the City of Kissimmee City Commission that it incorporate into its housing strategy certain changes designed to encourage production of affordable housing.

The AHAC, from its review, consideration, evaluation, and recommendations, drafts and submits this report to the City of Kissimmee City Commission and to the Florida Housing Finance Corporation, detailing the scope of its work and the resulting recommendations.

The AHAC has reviewed, considered, and evaluated the following the strategies provided in the SHIP Statute in Florida Statutes, Sec. 420.9076 (4):

- (a) The processing of approvals of development orders or permit, as defined in Florida Statutes, Sec, 163.3164(7), (8), for affordable housing projects is expedited to a greater degree than other projects.
- (b) The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.
- (c) The allowance of flexibility in densities for affordable housing.
- (d) The reservation of infrastructure capacity for housing for very low-income persons, low-income persons, and moderate-income persons.
- (e) The allowance of affordable accessory residential units in residential zoning districts.
- (f) The reduction of parking and setback requirements for affordable housing.
- (g) The allowance of flexible lot configurations, including zero-lot-line configurations for affordable housing.
- (h) The modification of street requirements for affordable housing.
- (i) The establishment of a process by which a local government considers, before adoption, policies, procedures, ordinances, regulations, or plan provisions that increase the cost of housing.
- (j) The preparation of a printed inventory of locally owned public lands suitable for affordable housing.
- (k) The support of development near transportation hubs and major employment centers and mixed-use developments.

From the review and evaluation of the local government documents listed here during the calendar year 2021, the AHAC makes these recommendations to the City of Kissimmee City Commission that it incorporate into its housing strategy the following:

Expedited Permitting

Meeting Synopsis:

The AHAC met and discussed this incentive on August 19, 2021.

Existing Strategy:

A policy and a process are in place in order to process permits for affordable housing developments in an expedited manner to the greatest extent possible.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Schedule for Implementation:

Not applicable.

Modification of Impact Fees

Meeting Synopsis:

The AHAC met and discussed this incentive on November 18, 2021.

Existing Strategy:

In lieu of an impact fee reduction or reimbursement, the City of Kissimmee includes in its Local Housing Assistance Plan a strategy that gives developers a financial incentive in the amount of \$20,000 as a contribution to affordable housing projects if they are participating in the Florida Housing Finance Corporation's funding process. In years when SHIP funding was not available the City Commission has waived building permit fees in the amount of \$20,000 as a local government contribution for the construction of affordable housing. However, this is not a standing policy.

AHAC Recommendation:

Develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.

Schedule for Implementation:

If the City Commission approves the AHAC recommendation, staff should research and bring findings to the AHAC in 2022.

Flexible Densities

Meeting Synopsis:

The AHAC met and discussed this incentive on October 21, 2021.

Existing Strategy:

The Kissimmee City Code allows for a density bonus of 5% if the development sets aside at least 10% of its units as affordable housing. These units must remain affordable for up to 30 years.

AHAC Recommendation:

In order for developments to be eligible for a density bonus of 5%, the development must set aside at least 20% of its units as affordable housing. These units must remain affordable for up to 15 years.

Schedule for Implementation:

If the City Commission approves the AHAC recommendation, the change would require a Code amendment. Staff shall initiate the necessary code amendment in 2022.

Reservation of Infrastructure Capacity

Meeting Synopsis:

The AHAC met and discussed this incentive on November 18, 2021.

Existing Strategy:

Most developers pay for the impact/mobility fees when they receive a building permit.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Schedule for Implementation:

Not applicable.

Parking and Setback Requirements

Meeting Synopsis:

The AHAC met and discussed this incentive on October 21, 2021.

Existing Strategy:

The Kissimmee City Code already addresses minimum parking and setback requirements.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Schedule for Implementation:

Not applicable.

Affordable Accessory Residential Units

Meeting Synopsis:

The AHAC met and discussed this incentive on November 18, 2021.

Existing Strategy:

Accessory dwelling units are permitted in most zoning districts provided they meet the requirements of the Land Development Code.

AHAC Recommendation:

City should not include attached Accessory Dwelling Units (ADU) in the density calculations for any of the zoning districts; however, the attached ADU should be included in the calculation for infrastructure for the purpose of calculating mobility fees, impact fees and connection fees. In addition, the City should remove the requirement that the principal structure be owner occupied.

Schedule for Implementation:

If the City Commission approves the AHAC recommendation, staff should research and bring findings to the AHAC in 2022.

Flexible Lot Configurations

Meeting Synopsis:

The AHAC met and discussed this incentive on October 21, 2021.

Existing Strategy:

The Land Development Code already includes flexible lot configurations, including zero lot line development.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Schedule for Implementation:

Final Report

Not applicable.

Modification of Street Requirements

Meeting Synopsis:

The AHAC met and discussed this incentive on October 21, 2021.

Existing Strategy:

The Kissimmee City Code already addresses modification of street requirements in the city code.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Schedule for Implementation:

Not applicable.

Process of Ongoing Review

Meeting Synopsis:

The AHAC met and discussed this incentive on August 19, 2021.

Existing Strategy:

The City of Kissimmee has an established process to determine the impact of regulatory changes on affordable housing.

AHAC Recommendation:

Staff from the initiating department/division shall meet with the Housing staff to discuss the impact of the policy on the cost of affordable housing. During the review of the proposed policy or regulation, the housing staff shall perform research on the impacts of that policy or regulation on housing cost and provide the results in the form of an impact analysis (Housing Impact Statement) to the AHAC at an upcoming meeting.

Schedule for Implementation:

Housing staff shall develop the Housing Impact Statement template for AHAC review in 2022.

Public Land Inventory

Meeting Synopsis:

The AHAC met and discussed this incentive on August 19, 2021.

Existing Strategy:

The current list, which was reviewed and adopted in 2019, includes all of the parcels of land owned by the City, not just those that are appropriate for the development of affordable housing.

AHAC Recommendation:

Housing staff shall prepare the inventory list of surplus land including only those parcels that are appropriate for affordable housing and to draft guidelines for a Surplus Land for Affordable Housing Program. The program shall include guidelines on parcel identification, oversight, disposition procedures, affordability requirements, etc.

Schedule for Implementation:

The inventory list must be adopted by the City Commission no later than by July 2022.

Support of Development Near Transportation Hubs

Meeting Synopsis:

The AHAC met and discussed this incentive on October 4, 2021.

Existing Strategy:

There is not a strategy to provide financial support of development near transportation hubs at this time.

AHAC Recommendation:

The City shall encourage housing developments that meet the definition of either affordable housing or workforce housing and are located near transportation, employment centers, and/or mixed used development through available funding sources and/or regulatory incentives.

Schedule for Implementation:

If the Kissimmee Commission approves the AHAC recommendation, the recommendation would require to be adopted as a policy. The Policy shall be adopted in 2022.

Other:

Community Land Trust

Meeting Synopsis:

The AHAC met and discussed this incentive on May 20, 2021 and June 17, 2021.

Existing Strategy:

There is not a strategy to support community land trusts at this time.

AHAC Recommendation:

The Community Land Trust model shall be evaluated as a potential program for affordable housing in the City of Kissimmee.

Schedule for Implementation:

If the City Commission approves the AHAC recommendation, housing staff shall evaluate the concept of the community land trust in 2022.

Definition of Affordable and Workforce Housing Developments

Meeting Synopsis:

The AHAC met and discussed this incentive on September 17, 2021.

Existing Strategy:

There is not a strategy that defines affordable and workforce housing at this time.

AHAC Recommendation:

Affordable Housing Developments– Developments in which at least 20% of the units are set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes.

Workforce Housing – No separate definition was recommended since housing units set aside for persons earning between 80% to 120% are already included in the above definition.

Schedule for Implementation:

If the Kissimmee Commission approves the AHAC recommendation, the definition shall be adopted and included in the Land Development Code.

ITEM 8.C

KISSIMMEE UTILITY AUTHORITY BOARD OF DIRECTORS REAPPOINTMENT

Request

The request is for City Commission consideration of the reappointment of an incumbent member of the Kissimmee Utility Authority (KUA) Board of Directors whose term expires in 2022.

Explanation

One of the seats on the KUA Board of Directors is set to expire in September of 2022. Board member Rae Hemphill is the incumbent appointee in this seat, is eligible for reappointment, and is interested in serving another term. Per City Commission policy, when a seat on the KUA Board is set to expire and the incumbent is eligible for re-appointment, the Commission is given the option to consider reappointment of the incumbent prior to KUA beginning the process of searching for candidates for the upcoming opening.

The term for this seat on the Board is from October 1, 2022 through September 30, 2027.

Recommendation

Staff requests Commission direction.

REQUESTED CITY COMMISSION ACTION:

Appoint/Reappoint

Department: City Manager

Presenter: Mike Steigerwald

Attachment(s):

1. Hemphill Reappointment Letter



December 10, 2021

Mr. Mike Steigerwald
City Manager
City of Kissimmee
101 Church Street
Kissimmee, FL 34741

Dear Mike,

The KUA Board member recruitment process will begin February 2, 2022 with the Board taking action on this task. The recruitment process includes, print dates to run the ad seeking potential board candidates in the newspapers in March and in April. Also, scheduling of the KUA board interview process for May 4, 2022.

In the past, based on those interviews, the KUA Board recommends the top three individuals to the City Commission for further interviews and consideration for appointment to the KUA Board.

However, the City Commission has requested to be informed if the incumbent board member is eligible to be reappointed to the KUA Board. Rae Hemphill is the incumbent board member and she is eligible for reappointment.

Please advise if the City Commission would like to move forward with the current process of KUA conducting interviews and then sending the names of the top three candidates to the City Commissioners for review or if the City Commissioners will move forward with the reappointment of Rae Hemphill to the KUA Board for another 5 year term from October 1, 2022 through September 30, 2027.

Thank you for your time and attention in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Horton", is written over a light blue horizontal line.

Brian Horton
President & General Manager
Kissimmee Utility Authority

ITEM 8.D

ADVISORY BOARD APPOINTMENT - VACANCY ON THE PARKS & RECREATION ADVISORY BOARD

Request

Commission requested to appoint a replacement to fill the vacancy on the Parks and Recreation Advisory Board due to the resignation of Hendrith Smith. The term for this vacancy is due to expire May 31, 2023.

Explanation

On November 23, 2021, Parks and Recreation staff received a resignation letter from Board Member Hendrith Smith; he tendered his resignation effective December 1, 2021.

As the Commission is aware, appointments are assigned to individual Commissioners in order of rotation. Seat # 5 had the last appointment, so this vacancy will be assigned to Seat # 1. All qualified applications will be provided to the Commission for consideration.

The Parks and Recreation Advisory Board requires members to be either Resident or Non-Resident (non-residents must reside in Osceola County), and no members may serve on any other board.

If Commissioner Castano does not make this appointment, 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 an appointment to fill the vacancy on the Parks and Recreation Advisory Board.

REQUESTED CITY COMMISSION ACTION:

Appoint/Reappoint

Department: City Manager

Presenter: Mike Steigerwald

Attachment(s):

1. Appointments by Seat 12-07-2021
2. (2021) 07-28-2021 PARAB and PAB Jaime Reyes Application (Osceola County Resident) Letter 7-30-2021
3. (2021) 04-20-2021 PARAB Application Randy Fisher (Non-City but County Eligible)
4. (2021) 03-19-2021 PARAB Application Scott Grenald (City Resident) (03-19-2021)

APPOINTMENTS BY SEAT

DATE: December 7, 2021

Commission Seat	Board (Position Filled)	Residency Requirement	Appointment/ Extension Expires	Request Reappointment
Seat # 1 Castano	Parks & Recreation Advisory Board Hendrith Smith (Resident)	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	1/18/2022	No (Resignation)

Linda Hansell

From: notifications@zohoforms.com
Sent: Wednesday, July 28, 2021 11:28 PM
To: Melissa ZayasMoreno; CITY CLERK
Subject: Advisory Board Application: Jaime Reyes
Attachments: AdvisoryBoardMemberApplication.pdf; Jaime_Resume_1_274672_.doc

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

A new advisory board application for Jaime Reyes has been submitted. The application has requested to serve on the following boards: (1) Parks & Recreation Advisory Board and (2) Planning Advisory Board.

Name	: Jaime, Reyes
Address	: 3772 Eagle Isle cir., Kissimmee, FL, 34746, United States
Phone	: 4077662163
Alternate Phone	: 3216772517
Email	: jreyes@vietrulife.com
Name of Employer	: Vietrulife Medical Clinic Spa
Employer City	: Kissimmee
Business Phone	: 407-910-4040
Please select an alternate advisory board you wish to serve on.	: Parks & Recreation Advisory Board
Please select the primary advisory board you wish to serve on.	: Planning Advisory Board
Are you a resident of the City of Kissimmee?	: Yes, I am a resident.
Do you own or operate a business in the City of Kissimmee?	: Yes, I own or operate a business in Kissimmee.
Please list any community activities, including organizations for which you have volunteered or any boards you have served on.	: United Way volunteer
Do you have any special skills or certifications?	: station Sr. Manager "FedEx Ground", operations and logistics specialist, human resources, experience managing and oversees over 600 employees and contractors, clinical research coordinator and owner, medical clinic manager and owner, vacations sales call center manager and owner.
Are you a member of any of the following minority groups?	: None of the above
Are you physically disabled?	: No, I am not physically disabled.
Please attach your resume or proof of qualification and/or licenses.	: Jaime_Resume_1_274672_.doc

City of Kissimmee Advisory Board Member Application

Name *

Jaime

First

Reyes

Last

Address *

3772 Eagle Isle cir.

Street Address

Kissimmee

City

FL

State/Region/Province

34746

Postal / Zip Code

United States

Country

Phone *

4077662163

Alternate Phone

3216772517

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Email *

jreyes@vietrulife.com

Name of Employer *

Vietrulife Medical Clinic Spa

Employer City

Kissimmee

Business Phone

407-910-4040

Please select an alternate advisory board you wish to serve on. *

Parks & Recreation Advisory Board



Please select the primary advisory board you wish to serve on. *

Planning Advisory Board



City of Kissimmee Advisory Board Member Application

Are you a resident of the City of Kissimmee? *

- ☒ Yes, I am a resident.
- ☐ No, I am not a resident.

Do you own or operate a business in the City of Kissimmee? *

- ☒ Yes, I own or operate a business in Kissimmee.
- ☐ No, I do not own or operate a business in Kissimmee.

Please list any community activities, including organizations for which you have volunteered or any boards you have served on.

United Way volunteer

Do you have any special skills or certifications?

station Sr. Manager "FedEx Ground", operations and logistics specialist, human resources, experience managing and oversees over 600 employees and contractors, clinical research coordinator and owner, medical clinic manager and owner, vacations sales call center manager and owner.

Examples: Engineer, Contractor, Teacher, Historian, Tradesman, etc.

Are you a member of any of the following minority groups? *

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American
- ☐ American Woman
- ☒ None of the above

Florida Statute encourages the diversification of various advisory boards and committees pursuant to Florida Statute 760.80. This chapter also requires annual reporting of the demographics of each advisory board or committee of the City.

Are you physically disabled?

- ☐ Yes, I am physically disabled.
- ☒ No, I am not physically disabled.

Florida Statutes requires the reporting under Chapter 780.80 of advisory board or committee members who are physically disabled.

Please attach your resume or proof of qualification and/or licenses.



Jaime_Resume_1_274672_.doc

3772 Eagle Isle Cir.
Kissimmee, FL 34746

Jaime Reyes

Cell: (407) 766-2163
Jreyes122091@gmail.com

OBJECTIVE

To join a progressive organization where my experience and determination will be instrumental in the company's future as well as my personal development, and one that will allow me to apply and develop my interpersonal skills.

EXPPERIENC

2020 TO PRESENT VIETRULIFE MEDICAL CLINIC SPA

- *OFFICE MANAGER AND OWNER*

2020 TO PRESENT VIDA CLINICAL RESEARCH

- *CLINICAL RESEACH COORDINATOR*

2018 TO 2020 TRUE VACATIONS INC.

- *OPERATIONS MANAGER*
 - ✓ Hiring and terminate staff
 - ✓ Training and hold day to day results meetings
 - ✓ Quality Assurance of customer service and sales
 - ✓ Time keeping and scheduling vacations
 - ✓ Ensure weekly productivity goals are met
 - ✓ Human resources and individuals quarterly progress meetings

2010 TO 2019 FEDEX GROUND

- *01/16/2016 – 2019 STATION MANAGER FEDEX GROUND*
 - ✓ Plans, organizes, staffs, directs, and controls the day-to-day operations of the sort.
 - ✓ Ensures the sort is running in accordance with established safety, quality, and service standards.
 - ✓ Ensure that cost and productivity goals are met.
 - ✓ Hiring and termination of staff.
 - ✓ Directs and guides the sort management team to ensure common understanding of operational updates and daily goals.
 - ✓ Ensures compliance with Company policy and federal, state, and local regulations.
 - ✓ Understand and administers all contractual agreements effectively, including vendor and Contracted Service Provider agreements, as necessary.

- **09/30/2010-01/15/2016 OPERATIONS MANAGER**

- ✓ Maintain supply and inventory of shipping packaging
- ✓ input and extract data from various systems to generate operations reports
- ✓ forward shipment paperwork for manifesting
- ✓ maintain all records and files
- ✓ provide administrative support to achieve highest service standards.

EDUCATION

**AUGUST 2008-MAY 2009 CELEBRATION HIGH SCHOOL
FL**

- High School Diploma

AUGUST-2011 TO 2014 POLYTECHNIC UNIVERSITY OF

- Degree in Business Administration

SKILLS

- Bilingual (English and Spanish)
- Computer proficiency
- Certify in first aid and hazardous materials
- Achiever, multitasking, and time management
- Customer service
- Team player

References Available Upon Request

Linda Hansell

From: notifications@zohoforms.com
Sent: Tuesday, April 20, 2021 3:13 PM
To: CITY CLERK; Melissa ZayasMoreno
Subject: Advisory Board Application: Randy G. Fisher
Attachments: AdvisoryBoardMemberApplication.pdf; Randy_G_Fisher.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

A new advisory board application for Randy G. Fisher has been submitted. The application has requested to serve on the following boards: (1) Parks & Recreation Advisory Board and (2) Parks & Recreation Advisory Board.

Name	: Randy G., Fisher
Address	: 78 W Cedarwood Circle, Kissimmee, Florida, 34741, United States
Phone	: 407-369-9973
Alternate Phone	: 407-791-6906
Email	: rgf52@comcast.net
Name of Employer	: Retired from City of Kissimmee
Employer City	: Retired - Parks & Recreation
Business Phone	: 407-578-2501
Please select an alternate advisory board you wish to serve on.	: Parks & Recreation Advisory Board
Please select the primary advisory board you wish to serve on.	: Parks & Recreation Advisory Board
Are you a resident of the City of Kissimmee?	: Yes, I am a resident.
Do you own or operate a business in the City of Kissimmee?	: No, I do not own or operate a business in Kissimmee.
Please list any community activities, including organizations for which you have volunteered or any boards you have served on.	: N/A
Do you have any special skills or certifications?	: 26 years Parks & Recreation Department knowledge
Are you a member of any of the following minority groups?	: None of the above
Are you physically disabled?	: No, I am not physically disabled.
Please attach your resume or proof of qualification and/or licenses.	: Randy_G_Fisher.pdf

City of Kissimmee Advisory Board Member Application

Name *

Randy G.

First

Fisher

Last

Address *

78 W Cedarwood Circle

Street Address

Kissimmee

City

Florida

State/Region/Province

34741

Postal / Zip Code

United States

Country

Phone *

407-369-9973

Alternate Phone

407-791-6906

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Email *

rgf52@comcast.net

Name of Employer *

Retired from City of Kissimmee

Employer City

Retired - Parks & Recreation

Business Phone

407-578-2501

Please select an alternate advisory board you wish to serve on. *

Parks & Recreation Advisory Board



Please select the primary advisory board you wish to serve on. *

Parks & Recreation Advisory Board



City of Kissimmee Advisory Board Member Application

Are you a resident of the City of Kissimmee? *

- ☒ Yes, I am a resident.
- ☐ No, I am not a resident.

Do you own or operate a business in the City of Kissimmee? *

- ☐ Yes, I own or operate a business in Kissimmee.
- ☒ No, I do not own or operate a business in Kissimmee.

Please list any community activities, including organizations for which you have volunteered or any boards you have served on.

N/A

Do you have any special skills or certifications?

26 years Parks & Recreation Department knowledge

Examples: Engineer, Contractor, Teacher, Historian, Tradesman, etc.

Are you a member of any of the following minority groups? *

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American
- ☐ American Woman
- ☒ None of the above

Florida Statute encourages the diversification of various advisory boards and committees pursuant to Florida Statute 760.80. This chapter also requires annual reporting of the demographics of each advisory board or committee of the City.

Are you physically disabled?

- ☐ Yes, I am physically disabled.
- ☒ No, I am not physically disabled.

Florida Statutes requires the reporting under Chapter 780.80 of advisory board or committee members who are physically disabled.

Please attach your resume or proof of qualification and/or licenses.



Randy_G_Fisher.pdf



CITY OF KISSIMMEE
ADVISORY BOARD MEMBER APPLICATION
(Please print or type all information)

Name: RANDY G. FISHER Date: 4/20/21
Address: 78 W. CEDARWOOD CIR City: Kissimmee State: FL
Zip Code: 34743 Home Telephone # (407) 369-9973
E-mail: RGF52@comcast.net Cellphone (407) 791-6906
Employer: RETIRED from City of Kissimmee
City: Kissimmee State: FL Zip Code: 34741
Business Telephone # (407) 518-2501

Are you a resident of the City of Kissimmee? ☐ Yes ☒ No

Do you own or operate a business in the City of Kissimmee? ☐ Yes ☒ No

Are you a member of any of the following minority groups: (FL State Statutes 760.80)
☐ African-American ☐ Asian ☐ Hispanic ☐ Native American
☐ American Woman ☐ Physically Disabled Person

Do you have any special skills or certification? NO
(Example: Engineer, Contractor, Teacher, Historian, Tradesman, etc.)

I am interested in serving on the following board(s):

1st Choice P&R ADVISORY BOARD 2nd Choice _____

Qualifications/Experience (You may attach a resume):

26 years PARKS & RECREATION Dept knowledge

Airport Advisory Board
Board of Adjustment
Building Trades & Examining Board
Charter School Advisory Board
Code Enforcement Board
Community Redevelopment Agency (2)
Fire Pension / Police Pension Boards
Flora Ridge Educational Facilities Board
Gateway Advisory Committee (County)

Greater Osceola Partnership for Economic
Prosperity (GOPEP)
Historic Preservation Board
Housing Advisory Board
Osceola County Historical Society
Osceola County Land Conservation Board
MetroPlan Citizen Advisory Committee
Parks & Recreation Advisory Board
Planning Advisory Board

PLEASE RETURN TO:
City Clerk's Office
101 Church Street
Kissimmee, FL 34741-5054
(407) 518-2308 FAX (407) 518-2260

Linda Hansell

From: notifications@zohoforms.com
Sent: Friday, March 19, 2021 7:25 AM
To: CITY CLERK; Melissa ZayasMoreno
Subject: Advisory Board Application: scott Grenald
Attachments: AdvisoryBoardMemberApplication.pdf; New_resume.docx

Follow Up Flag: Flag for follow up
Flag Status: Flagged

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

A new advisory board application for scott Grenald has been submitted. The application has requested to serve on the following boards: (1) Parks & Recreation Advisory Board and (2) Parks & Recreation Advisory Board.

Name	: scott, Grenald
Address	: 1821 Ironwood way, Kissimmee, FL, 34746, United States
Phone	: 7862617592
Alternate Phone	:
Email	: scottbrian82@gmail.com
Name of Employer	: Dollar Star Consultants
Employer City	:
Business Phone	:
Please select an alternate advisory board you wish to serve on.	: Parks & Recreation Advisory Board
Please select the primary advisory board you wish to serve on.	: Parks & Recreation Advisory Board
Are you a resident of the City of Kissimmee?	: Yes, I am a resident.
Do you own or operate a business in the City of Kissimmee?	: No, I do not own or operate a business in Kissimmee.
Please list any community activities, including organizations for which you have volunteered or any boards you have served on.	: 12 years on the Arts, Cultural and Special Events board in the city of North Bay Village
Do you have any special skills or certifications?	:
Are you a member of any of the following minority groups?	: None of the above
Are you physically disabled?	: No, I am not physically disabled.
Please attach your resume or proof of qualification and/or licenses.	: New_resume.docx

City of Kissimmee Advisory Board Member Application

Name *

scott

First

Grenald

Last

Address *

1821 Ironwood way

Street Address

Kissimmee

City

FL

State/Region/Province

34746

Postal / Zip Code

United States

Country

Phone *

7862617592

Alternate Phone

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Email *

scottbrian82@gmail.com

Name of Employer *

Dollar Star Consultants

Employer City

Business Phone

Please select an alternate advisory board you wish to serve on. *

Parks & Recreation Advisory Board

Please select the primary advisory board you wish to serve on. *

Parks & Recreation Advisory Board

City of Kissimmee Advisory Board Member Application

Are you a resident of the City of Kissimmee? *

- ☒ Yes, I am a resident.
- ☐ No, I am not a resident.

Do you own or operate a business in the City of Kissimmee? *

- ☐ Yes, I own or operate a business in Kissimmee.
- ☒ No, I do not own or operate a business in Kissimmee.

Please list any community activities, including organizations for which you have volunteered or any boards you have served on.

12 years on the Arts, Cultural and Special Events board in the city of North Bay Village

Do you have any special skills or certifications?

Examples: Engineer, Contractor, Teacher, Historian, Tradesman, etc.

Are you a member of any of the following minority groups? *

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American
- ☐ American Woman
- ☒ None of the above

Florida Statute encourages the diversification of various advisory boards and committees pursuant to Florida Statute 760.80. This chapter also requires annual reporting of the demographics of each advisory board or committee of the City.

Are you physically disabled?

- ☐ Yes, I am physically disabled.
- ☒ No, I am not physically disabled.

Florida Statutes requires the reporting under Chapter 780.80 of advisory board or committee members who are physically disabled.

Please attach your resume or proof of qualification and/or licenses.



New_resume.docx

Scott B. Grenald

Doral, FL

P: (786) 261-7592 (C)

E: scottbrian82@gmail.com

Profile

- Ten (10) years of food & beverage management and service experience
- Skilled supervisor, able to lead team members
- Good listener, quick learner, strong customer service skills
- Comfortable working well independently or a part of a team
- Available to work all shifts (preference for day shifts)

FOOD & BEVERAGE EXPERIENCE

Burgerfi, Miami Beach, FL

Mar. 2014 – Jan. 2016

Supervisor/Manager

- Assisted in cooking all orders.
- Prepped food needed for the day.
- Dealt with large amounts of money.

Panera Bread, Miami Beach, FL

Feb. 2013 – Dec. 2013

Associate Food Service Trainer

- Served more than 50 customers daily; building salads/sandwiches and plating orders.
- Promoted within five (5) months to Trainer position.

Bagel Time, Miami Beach, FL

June 2010 – Feb. 2013

Kitchen Manager

- Assisted chef on the grill, made salads and sandwiches
- Maintained inventory; ordering daily produce and bagels
- Updated menu as needed with new menu items and price changes

Laurenzo's Farmers Market, North Miami Beach, FL

Feb. 2007 – Aug. 2008

Stocker

- Responsible for unloading trucks and stocking the produce isles
- Responded to customer inquiries

EVENT PLANNING EXPERIENCE

Miami Dade College

Oct. 2004 – Oct. 2006

Events Coordinator

- Planned, coordinated and executed campus events from the Office of Student Life to student body
- Oversaw the planning and execution of logistics and operations for private meetings, conferences, road/trade shows and special events.
- Managed all sort of the event operations – The facility selection, contracting, pricing, transportation, accommodations, food and beverage selections and audio/visual service arrangements.

- Supervised production of events – Worked with event sponsors and internal/external teams on all aspects of planning the event.
- Planned the event floor plan and its budget and produced the event materials and accessories.

Joyce & Company

Mar. 1992 – Nov. 2015

Help make centerpieces

Help with party set up

Made invitations

Proficient in Word, Excel and other MS Office products

Creative Memories

Mar. 1992 – Nov. 2015

Help make centerpieces

Help with party set up

Made invitations

Proficient in word, excel, publisher, print shop

Volunteer

City of North Bay Village, North Bay Village, FL
2012

Nov. 2000 – Nov.

Arts, Culture & Special Events Board

- Citywide Event Planning, set-up and break-down for seasonal/holiday events

Education & Licensing

Miami-Dade College

2001-2004

Studied Business Administration

Miami Beach Senior High School, Miami Beach, FL

High School Diploma

2000

Bartending, Fine Dining and Customer Service Certificate

2014

Restaurant Opportunities Centers United

Notary, Florida