



**MEETING AGENDA
SESSION OF THE COMMISSION MEETING
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, MARCH 1, 2022 AT 6:00 PM**

1. MEETING CALLED TO ORDER

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A Proclamation - Women's History Month 2022

3.B Proclamation - March for Meals & National Nutrition Month

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

4.A Public Hearing - First Reading - Ordinance Updating Emergency Service Rates and Charges - Proposed Ordinance No. 22-06

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, CHAPTER 20, ARTICLE II, EMERGENCY MEDICAL SERVICES; SECTION 20-19, RATES AND CHARGES; MODIFYING BASE RATES FOR ALL SERVICES; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

5. PUBLIC HEARINGS

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 the handling of routine miscellaneous business of the City Commission. The City Commission in one motion may adopt the entire Consent Agenda. The motion for adoption is non-debatable and must receive unanimous approval. By request of any individual member, an item may be removed from the Consent Agenda for discussion.

7.A Approval of City Commission Minutes

7.B Award of Bid (RFP2022-001) for Roofing Installation and Repair Contractor Services for City Facilities

7.C Fourth Amended and Restated Interlocal Agreement Regarding Educational Impact Fees

7.D Purchase Portable Radios from Motorola Solutions, Inc.

7.E Acceptance of the 2021-2022 EMS County Awards Grant

7.F Kissimmee Police Department's Wrecker Service Qualifications and Tow Rotation List Guidelines & the Tow Rotation Application and Inspection Form

7.G Sonoma Resort at Tapestry, Phase 2A – Major Subdivision, Final Plat (DRC# 19-00165)

8. DISCUSSION ITEMS

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 Commission Meeting 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 State 286.26, persons needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 101 Church Street, Kissimmee, Florida, (407) 518-2309.

ITEM 3.A

Proclamation - Women's History Month 2022

Request

The request is for the City Commission to present a Proclamation in honor of "Women's History Month".

Explanation

N/A

Department: City Manager
Presenter: Mike Steigerwald

Attachment(s):

1. Proclamation-Women's History Month.2022

Proclamation



WOMEN'S HISTORY MONTH

WHEREAS, Women's History Month honors and celebrates the struggles and achievements of American women throughout the history of the United States; and

WHEREAS, American women have played and continue to play a critical economic, cultural and social role in our Country and City; and

WHEREAS, Women have played an important role throughout the history of our Nation by providing the majority of volunteer labor force; and

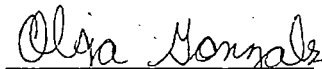
WHEREAS, Women of all walks of life from business women, to volunteers, to stay at home moms, to government officials, have improved our County and our Nation; and

WHEREAS, Women's History Month is an opportunity for us to recognize the contributions women have made to our Nation and the City of Kissimmee for countless years.

NOW, THEREFORE, we, the City Commission for the City of Kissimmee do hereby proclaim the month of March 2022 as "WOMEN'S HISTORY MONTH."

IN WITNESS, THEREOF, this is signed this 1st day of March 2022.


CITY MANAGER


MAYOR-COMMISSIONER



ITEM 3.B

Proclamation - March for Meals & National Nutrition Month

Request

The request is for the City Commission to present a Proclamation in honor of "March for Meals & National Nutrition Month".

Explanation

N/A

Department: City Manager
Presenter: Mike Steigerwald

Attachment(s):

1. Proclamation-March for Meals Month.2022

Proclamation

City of
Kissimmee
Florida

MARCH FOR MEALS & NATIONAL NUTRITION MONTH IN OSCEOLA COUNTY

WHEREAS, the Kissimmee City Commission makes every effort to recognize programs that make significant contributions to the quality of life for residents of the City of Kissimmee and Osceola County; and

WHEREAS, by providing meals and other nutrition services, senior nutrition programs enable individuals who are ill, frail, elderly, nutritionally at-risk or disabled to live independently in their homes and avoid premature institutionalization; and

WHEREAS, Meals on Wheels provides important daily social contact for homebound individuals. Senior Dining Clubs provide not only a nutritious noon meal, but socialization; and

WHEREAS, one of the goals of senior nutrition programs is to ensure that no senior goes to bed hungry; and

WHEREAS, senior nutrition programs are community-based and rely on the support of the community's resources, both human and financial, to achieve their goals; and

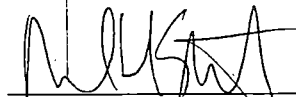
WHEREAS, the Osceola Council on Aging's Meals on Wheels program has operated in Osceola County for 49 years providing services to the frail and vulnerable residents of our community; and

WHEREAS, in 2020, the Osceola Council on Aging's Nutrition and Meals on Wheels Programs provided over 1,836,035 pounds of food, served to the elderly, disadvantaged and disabled citizens in Osceola County. 447,051 hot, nutritious meals were served and delivered to 2,445 clients; and 228 families. That included 531 children who received food, clothing, toys and gift baskets during the holiday season; and

WHEREAS, senior nutrition programs across Florida and throughout the United States are participating in the March for Meals campaign in order to increase public awareness of the work and needs of senior nutrition programs, and to raise funds and recruit volunteers to assist in the delivery of meals and other nutrition services to help stop senior hunger.

NOW, THEREFORE, we, the City Commission for the City of Kissimmee do hereby proclaim March 2022 as "MARCH FOR MEALS & NATIONAL NUTRITION MONTH" in the City of Kissimmee.

IN WITNESS, THEREOF, this is signed this 1st day of March 2022.


CITY MANAGER


MAYOR-COMMISSIONER



ITEM 4.A

Public Hearing - First Reading - Ordinance Updating Emergency Service Rates and Charges - Proposed Ordinance No. 22-06

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, CHAPTER 20, ARTICLE II, EMERGENCY MEDICAL SERVICES; SECTION 20-19, RATES AND CHARGES; MODIFYING BASE RATES FOR ALL SERVICES; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

Request

This is a request to approve the first reading of Proposed Ordinance No. 22-06 to update emergency medical services rates and charges, and to authorize staff to automatically adjust fees every two years according to the annual Ambulance Inflation Factor (AFI) and the Consumer Price Index (CPI).

Explanation

The City last updated its Emergency Medical Services (EMS) rates and charges in March 2012. Since that time, the cost of EMS supplies has risen over 210%. Based on this and the fact that the current fees are below the average rates charged by other Central Florida EMS agencies, staff is requesting the Commission approve this proposed ordinance to adjust the rates. Adjusting the fees will enable the Fire Department to better fund measures to meet the increased demand for EMS services that is provided to the community.

Current rates are as follows:

Ambulance Transport (BLS)	\$600.00
Advanced Life Support (ALS 1)	\$650.00
Advanced Life Support with transport (ALS 2)	\$700.00
Treatment without Transport (ALS)	\$400.00
Mileage (per loaded mile)	\$ 10.00

To bring the City's rates more in line with the actual costs and the average rates charged by other jurisdictions in the Central Florida region, staff is proposing the following rates:

Basic Life Support (BLS) Transport	\$775.00
Advanced Life Support (ALS 1)	\$800.00
Transport Advanced Life Support (ALS 2)	\$870.00
Treatment without Transport (ALS)	\$400.00
Mileage (per loaded mile, per patient)	\$ 12.00

Osceola County Fire Rescue and St. Cloud Fire Rescue are both evaluating their current rates as well.

Recommendation

Staff recommends approval of the first reading of the Ordinance.

REQUESTED CITY COMMISSION ACTION:

Approve
City of Kissimmee

Department: Fire

Presenter:

Attachment(s):

1. Proposed Ordinance No. 22-06
2. Advertisement Prop Ord 22-06 Emergency Medical Services Rates and Charges (Gazette 02-24-2022)

PROPOSED ORDINANCE NO. 22-06
ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, CHAPTER 20, ARTICLE II, EMERGENCY MEDICAL SERVICES; SECTION 20-19, RATES AND CHARGES; MODIFYING BASE RATES FOR ALL SERVICES; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Rates and Charges

The following rates and charges shall be assessed by the City of Kissimmee for the provision of the services indicated:

EMERGENCY MEDICAL SERVICES RATES AND CHARGES:

1. Base Rates

Basic Life Support Transport Fee (BLS)	\$775.00
Advanced Life Support (ALS 1)	\$800.00
Advanced Life Support (ALS 2)	\$870.00
Treatment without Transport (ALS)	\$400.00
Mileage	\$12.00

The table of Rates and Charges shall automatically increase every two (2) years according to the annual Ambulance Inflation Factor (AIF) and the Consumer Price Index (CPI).

SECTION 2. All Ordinances in conflict herewith are hereby repealed.

SECTION 3. This Ordinance shall take effect immediately upon its passage.

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

AYES:

NAYS:

Said motion having been duly carried, thereupon, _____, declared said Ordinance duly passed and adopted this _____ day of _____, 2022.

Olga Gonzalez, Mayor-Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legality:

Olga Sanchez de Fuentes, City Attorney

NOTICE OF PUBLIC HEARING
AND SECOND READING

The City Commission of the City of Kissimmee, Florida will meet on **Tuesday, March 1, 2022, at 6:00 p.m.** in the City Commission Chambers, Municipal Administration Building, 101 Church Street, Kissimmee, Florida, to hear the **FIRST READING** and will meet on **Tuesday, March 15, 2022, at 6:00 p.m.** to hear the **SECOND AND FINAL READING** and consider the passage of the proposed ordinance as set forth below. The proposed Ordinance may be inspected in the Office of the City Clerk at the Municipal Administration Building, 101 Church Street, Kissimmee, Florida. All interested parties may appear and be heard on the above dates.

PROPOSED ORDINANCE # 22-06

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, CHAPTER 20, ARTICLE II, EMERGENCY MEDICAL SERVICES; SECTION 20-19, RATES AND CHARGES; MODIFYING BASE RATES FOR ALL SERVICES; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

CITY COMMISSION
KISSIMMEE, FLORIDA

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

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

ITEM 7.A

Approval of City Commission Minutes

Request

Request Commission approval of the February 1, 2022 and February 15, 2022 Commission Minutes.

Explanation

Minutes of the Commission meeting held on February 1, 2021 and February 15, 2022 are attached for approval.

Recommendation

Staff recommends Commission approval.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Commission

Presenter:

Attachment(s):

1. Commission Minutes - February 1, 2022
2. Commission Minutes - February 15, 2022



**MEETING MINUTES
SESSION OF THE COMMISSION MEETING
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, FEBRUARY 1, 2022 AT 6:00 PM**

- 1. MEETING CALLED TO ORDER** Members Present: Mayor Olga Gonzalez, Commissioners Olga Castano, Felix Ortiz, Carlos Alvarez, III, Jim Fisher
Staff Present: City Manager Mike Steigerwald, City Attorney Olga Sanchez de Fuentes, Deputy City Manager Desiree Matthews, Assistant City Manager Austin Blake, City Clerk Linda Hansell
Members Absent: None

Mayor Gonzalez called the meeting to order at 6:00 PM.

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

After a Moment of Silence, Commissioner Fisher led the audience in the Pledge of Allegiance.

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A SWEARING IN CEREMONY FOR FOUR NEW POLICE OFFICERS

Swearing in and administering of oath for four new police officers.

Police Chief Jeff O'Dell introduced four (4) new Police Officers and administered the Oath of Office to Wilfredo Castro, Karen Devaliere, Kristian Rivera, Thinh Vo.

3.B PRESENTATION OF THE KISSIMMEE FESTIVAL OF LIGHTS PARADE WINNERS FOR 2021

Acknowledgement and distribution of awards to the 2021 Kissimmee Festival of Lights Parade winners.

Assistant Parks and Recreation Director, Matt Libby, introduced Benjamin Burnett, who made the presentations.

Mr. Burnett thanked the individuals who participated in the Festival of Lights parade and recognized all the award winners as listed on the agenda.

3.C RECOGNITION OF THE BOB MAKINSON AQUATIC CENTER TEAM FOR ACHIEVING THE 2021 PLATINUM INTERNATIONAL AQUATIC SAFETY AWARD

City Commission recognition of Bob Makinson Aquatic Center Team for achieving the 2021 Platinum International Aquatic Safety Award.

Assistant Director Libby recognized Rod Bargaineer who made the presentation.

Rod Bargaineer, Recreation & Leisure Services Manager, explained the Platinum Award and recognized the staff from the Bob Makinson Aquatic Center.

3.D PROCLAMATION - AFRICAN AMERICAN HISTORY MONTH 2022

The request is for the City Commission to present a Proclamation in honor of "African American History Month".

City Manager Steigerwald read a proclamation in honor of African American History Month as the Mayor and Commissioners presented the proclamation to Deloris McMillon and a group of representatives from the local National Association for the Advancement of Colored People (NAACP).

Deloris McMillon thanked the Commission for this recognition and she introduced Nita Hill, Paula King, Rev. Paul Segan, Annette Burke, Andrea Rolls, and Terry Segan.

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

4.A PUBLIC HEARING - FIRST READING - PROPOSED ORDINANCE 22-05 AMENDING SECTION 42-19: VEHICLE REGULATIONS AFFECTING PARKING IN THE CITY

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE; CHAPTER 42, TRAFFIC AND VEHICLES, ARTICLE II, PARKING, STANDING, STOPPING, DIVISION 1, GENERALLY, SECTION 42-19, VEHICLE REGULATIONS, AFFECTING PARKING IN THE CITY; REPEALING ALL ORDINANCES CONFLICTING HERewith AND PROVIDING AN EFFECTIVE DATE

Approval of First Reading of Proposed Ordinance 22-05 to enable parking by permit.

City Attorney Sanchez de Fuentes read Proposed Ordinance # 22-05 by title.

City Manager Steigerwald provided details of the proposed ordinance and the ability to allow for future permitted parking in downtown.

Mayor Gonzalez announced the public hearing with no response from the audience.

Commissioner Fisher moved to approve the public hearing for Proposed Ordinance # 22-05. Commissioner Castano seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Fisher	AYE
Commissioner Castano	AYE
Commissioner Ortiz	AYE
Commissioner Alvarez	AYE
Mayor Gonzalez	AYE

Motion carried 5 - 0.

5. PUBLIC HEARINGS

None.

6. HEAR AUDIENCE

Ray Parsons, 111 E. Monument Avenue, Unit 805, Kissimmee, addressed the Commission in reference to the Makinson Hardware store that was built in the 1880's. The building was instrumental to the foundation of the City. The Makinson Family sold the business because they believed the property would be preserved in its historical quality. He has recently acquired the building and plan to add a pavilion in the parking lot, ten (10) apartment units, restaurant, offices, and restore the front of the store to the historic brick facet. When he had a conversation with the City Manager, it was mentioned the City was working on a Pioneer Grant. Being the current owner of the building, the Pioneer Grant would be of a great benefit for the renovation of this building. He doesn't believe there is a more deserving building in the City. Mr. Parsons understood the grant is ready just needs to be completed.

7. CONSENT AGENDA

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Commissioner Fisher made a motion to approve the Consent Agenda in its entirety. Commissioner Castano seconded the motion.

Motion carried 5 – 0.

7.A COMMISSION MINUTES APPROVAL

Request Commission approval of the January 18, 2022, Commission Minutes.

7.B AUTHORIZATION TO SUBMIT APPLICATION FOR 2022-23 VOCA GRANT

The Police Department requests authorization to submit an application to the Office of the Attorney General for the Victim of Crimes Act (VOCA) grant for fiscal year 2022-2023.

7.C CONVEYANCE OF A PARTIAL DRAINAGE EASEMENT TO THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE SUNRAIL DOUBLE TRACKING IMPROVEMENT PROJECT

Approval to assign partial drainage rights for drainage purposes and to convey a drainage easement over property owned by the City of Kissimmee to the Florida Department of Transportation (FDOT).

7.D AMENDMENT TO TASK WORK ORDER NO. 4 WITH RS&H, INC FOR THE WOODSIDE DRAINAGE IMPROVEMENT PROJECT

Approval to amend Task Work Order No. 4 with RS&H, Inc by \$64,560.34 to provide additional design services for the Woodside Drainage Improvement project.

7.E PURCHASE OF A DROP-WING MOWER FROM ALAMO GROUP, INC.

Approval to purchase an Alamo Brahma drop-wing mower from Alamo Group, Inc. in the amount of \$124,848.70.

- 7.F PURCHASE OF A WHEEL LOADER FROM DOBBS EQUIPMENT LLC
Approval to purchase a John Deere 644 L-series wheel loader from Dobbs Equipment LLC in the amount of \$223,853.80. This is funded by the Local Option Sales Tax Fund.
- 7.G AMENDMENT TO TASK WORK ORDER NO. 3 WITH RS&H, INC. FOR THE WEST OAK STREET AT JOHN YOUNG PARKWAY IMPROVEMENT PROJECT
Approval to amend Work Order No. 3 with RS&H, Inc. by \$69,091.60 for additional design services associated with the plans update for the West Oak Street at John Young Parkway improvement project and transfer funds from the Local Option Sales and Gas Tax Funds to cover the costs.
- 7.H AWARD OF BID FOR THE CONSTRUCTION OF THE HUDSON STREET IMPROVEMENTS PROJECT
Approval to award the bid for the construction of the Hudson Street Improvements Project to DB Civil Construction, LLC, of St. Augustine, Florida in the amount of \$373,204.
- 7.I TASK WORK ORDER NO. 1 WITH CONSOR ENGINEERS, LLC FOR CONSTRUCTION ENGINEERING & INSPECTION (CEI) SERVICES FOR THE HUDSON STREET IMPROVEMENT PROJECT
Approval of Task Work Order No. 1 with CONSOR Engineers, LLC for the construction engineering & inspection (CEI) services for the Hudson Street Improvement project and approval to transfer funds from the Stormwater Fund to cover project costs.

8. DISCUSSION ITEMS

None.

9. HEAR CITY OFFICIALS

- 9.A CITY MANAGER
City Manager Steigerwald notified the Commission the first Citizens Police Review Board meeting will be held tomorrow, February 2nd at 9:00 a.m. in the Chambers.
- City Manager Steigerwald provided information to the Commission on the large Bass Fishing Tournament being held at Lakefront Park this weekend; expect over 400 boats, but it will be good exposure for the City.
- City Manager Steigerwald informed the Commission he would be out of the office next week and Deputy City Manager Matthews would be in charge.
- 9.B CITY ATTORNEY
Nothing.
- 9.C CITY COMMISSION
Nothing.

10. ADJOURNMENT

There being no further business to come before the Commission, Mayor Gonzalez adjourned the meeting at 6:24 PM.

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

Exhibit "A"
Oath of Office – Kissimmee Police Officers
Wilfredo Castro, Karen Devaliere, Kristian Rivera, Thinh Vo
Item 3.A



**MEETING MINUTES
SESSION OF THE COMMISSION MEETING
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, FEBRUARY 15, 2022 AT 6:00 PM**

1. **MEETING CALLED TO ORDER Members Present:** Mayor Olga Gonzalez, Commissioners Olga Castano, Felix Ortiz, Carlos Alvarez, III
Staff Present: City Manager Mike Steigerwald, City Attorney Olga Sanchez de Fuentes, Deputy City Manager Desiree Matthews, Assistant City Manager Austin Blake, City Clerk Linda Hansell
Members Absent: Commissioner Jim Fisher

Mayor Gonzalez called the meeting to order at 6:00 PM.

2. **MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**

After a Moment of Silence, Commissioner Ortiz led the audience in the Pledge of Allegiance.

3. **PROCLAMATIONS AND SPECIAL PRESENTATIONS**

- 3.A **EMPLOYEE OF THE MONTH FOR FEBRUARY**

The City Commission join the City Manager in recognizing Victor Daboin, Public Works & Engineering, as Employee of the Month for February.

City Manager Steigerwald introduced Victor Daboin from Public Works and reviewed the attributes that Mr. Daboin exemplifies as an employee providing services to the citizens and his co-workers. City Manager Steigerwald reminded the audience that the employee of the month is nominated by peers and selected by a committee of peers representatives from all departments in the City and there is no greater honor.

Mr. Daboin stated he loves his job working for the City and takes great pride in his work.

- 3.B **BLACK HISTORY MONTH ART EXHIBIT**

The request is for the City Commission to view a presentation showcasing "Black History Month."

Communications & Public Affairs Officer Melissa Zayas-Moreno reviewed the presentation on Black History Month and recognized the individual Artist who participated by allowing the City to display their artwork in City Hall. Certificates of Appreciation were prepared for the following artists: Ehreeqah Jahnese, Hemler Maurcette, Mark "Tr3" Harris, Pamela Bussey, Diahnn Perry, Lamont White, Tiffany Mcleod, Mkeedah Mcleod, and Jessica Rodriguez.

Ms. Zayas-Moreno reminded the audience the artwork would be on display through the end of the February.

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

4.A PUBLIC HEARING - SECOND AND FINAL READING - PROPOSED ORDINANCE 22-05 AMENDING SECTION 42-19: VEHICLE REGULATIONS AFFECTING PARKING IN THE CITY

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE; CHAPTER 42, TRAFFIC AND VEHICLES, ARTICLE II, PARKING, STANDING, STOPPING, DIVISION 1, GENERALLY, SECTION 42-19, VEHICLE REGULATIONS, AFFECTING PARKING IN THE CITY; REPEALING ALL ORDINANCES CONFLICTING HEREWITH AND PROVIDING AN EFFECTIVE DATE

Approval of the Second and Final Reading of Proposed Ordinance 22-05 to enable parking by permit.

City Attorney Sanchez de Fuentes read Proposed Ordinance # 3052 by title.

City Manager Steigerwald reviewed the request and stated with the passage of this ordinance, it will allow for future use of parking by permit, it is anticipated that staff will be bringing recommendations to the Commission,

Mayor Gonzalez announced the Public Hearing.

Thomas Kapp, 21 N. Clyde Avenue, Kissimmee, requested clarification on what the ordinance was approving.

City Manager Steigerwald and City Attorney Sanchez de Fuentes responded to Mr. Kapp's questions stating the approval of this ordinance will allow for a policy to be developed for permitted parking. The policy will be brought back to the Commission for approval prior to implementation.

Commissioner Castano moved to adopt Ordinance # 3052 (Exhibit "A"). Commissioner Ortiz seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Fisher	ABSENT
Commissioner Castano	AYE
Commissioner Ortiz	AYE
Commissioner Alvarez	AYE
Mayor Gonzalez	AYE

Motion carried 4 - 0.

5. PUBLIC HEARINGS

None.

6. HEAR AUDIENCE

None.

7. CONSENT AGENDA

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Commissioner Castano made a motion to approve the Consent Agenda in its entirety. Commissioner Ortiz seconded the motion.

Motion carried 4 – 0.

7.A DISPOSAL OF CITY ASSETS

Approval to dispose of the asset items detailed in the attached report.

7.B TRAFFIC EASEMENT AGREEMENT FOR THE CONSTRUCTION OF THE TRAFFIC SIGNAL AT WEST OAK STREET AND NORTH CENTRAL AVENUE

Acceptance of the Traffic Easement Agreement between the City of Kissimmee and Speedy Wash Laundry, Inc. for the construction of the traffic signal at West Oak Street and North Central Avenue.

7.C SUPPLEMENTAL AGREEMENT NO. 1 TO AMENDMENT NO. 9 TO THE PROFESSIONAL SERVICE AGREEMENT WITH AVCON, INC. TO UPDATE THE AIRPORT ELECTRICAL VAULT PROJECT

Staff requests Commission approval of Supplemental Agreement No.1 to Amendment No. 9 of the professional service agreement between the City of Kissimmee and AVCON, Inc. that was executed on October 20, 2020, to oversee the completion of the airport electrical vault project.

7.D CHANGE ORDER NO. 1 WITH GOMEZ CONSTRUCTION FOR ELECTRICAL VAULT PROJECT AT KISSIMMEE GATEWAY AIRPORT

Approval of Change Order No. 1 with Gomez Construction for Airport Electrical Vault Project in the amount \$212,404.64 using FAA grant funding.

7.E APPROVAL OF SECOND AMENDMENT TO LANDSCAPE SERVICE AGREEMENT - PREMIER LAWN MAINTENANCE LLC

Approval of the Second Amendment to the Landscape Services Agreement between the City and Premier Lawn Maintenance LLC.

7.F APPROVAL OF THE FIRST AMENDMENT TO THE LANDSCAPE SERVICE AGREEMENT BETWEEN THE CITY AND GROUNDTEK OF CENTRAL FLORIDA LLC

Approval of the first amendment to the Landscape Service Agreement between the City and Groundtek of Central Florida, LLC for the Kissimmee Lakefront Park.

7.G APPROVAL TO SUBMIT A 2022 RECREATION TRAILS PROGRAM (RTP) GRANT APPLICATION TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE SHINGLE CREEK REGIONAL TRAIL

Approval to submit a 2022 Recreational Trails Program Grant Application to the Florida Department of Environmental Protection for the Shingle Creek Regional Trail.

7.H ACCEPTANCE OF A \$25,000 SPONSORSHIP FROM THE KISSIMMEE UTILITY AUTHORITY TO SUPPORT THE FESTIVAL SERIES

Approval to accept a \$25,000 sponsorship from the Kissimmee Utility Authority and adjust the Parks & Recreation budget accordingly.

7.I MASTER OPERATIONS AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF KISSIMMEE AND KISSIMMEE UTILITY AUTHORITY (KUA) FOR STREET AND AREA LIGHTING

Approval to accept the Master Operations and Maintenance Agreement between the City of Kissimmee and KUA for street and area lighting.

7.J EXECUTION OF THE OSCEOLA HOME CONSORTIUM DISBURSEMENT AGREEMENT BETWEEN OSCEOLA COUNTY AND THE CITY OF KISSIMMEE FOR FY 2021-2022

Approval to execute the Osceola HOME Consortium Disbursement Agreement between Osceola County and the City of Kissimmee for FY 2021-2022.

7.K DISASTER RESPONSE SERVICES CONTRACT EXTENSION - DEBRIS REMOVAL CONTRACT WITH CROWDER GULF AND SOUTHERN DISASTER RECOVERY, LLC

Approval to extend the Disaster Response Services Contract for Debris Removal with Crowder Gulf and Southern Disaster Recovery.

7.L DISASTER RESPONSE SERVICES CONTRACT EXTENSION - DEBRIS MONITORING CONTRACT WITH THOMPSON CONSULTING SERVICES

Approval to extend the Disaster Response Services Contract for debris monitoring with Thompson Consulting Services for one year.

8. DISCUSSION ITEMS

8.A APPROVAL OF COMPONENTS FROM THE CITY'S PROPOSED STRATEGIC PLAN FOR FISCAL YEAR 2022-23

Request approval of key components from the City of Kissimmee's "2036 Strategic Vision" for the 2022-23 fiscal year.

City Manager Steigerwald reviewed the Commission's Top and High Priority items as well as Vision 2036 and Goals for 2027.

Commissioner Alvarez made a motion to approve the Strategic Plan for FY2022-2023. Commissioner Castano seconded the motion.

AYE: Mayor-Commissioner Gonzalez, Commissioner Ortiz, Commissioner Alvarez, III, Commissioner Castano

NAY: None

Motion to Approve Passed 4 - 0.

9. HEAR CITY OFFICIALS

9.A CITY MANAGER

Nothing.

9.B CITY ATTORNEY

Nothing.

9.C CITY COMMISSION

Commissioner Castano wished everyone a wonderful evening.

10. ADJOURNMENT

There being no further business to come before the Commission, Mayor Gonzalez adjourned the meeting at 6:17 PM.

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

ITEM 7.B

Award of Bid (RFP2022-001) for Roofing Installation and Repair Contractor Services for City Facilities

Request

Approval to award continuing services for Roofing Installation and Repair Contractor Services for City facilities to the top four (4) contractors that provided a responsive bid to the request for the qualifications.

Explanation

On October 24, 2021, the Public Works and Engineering Facilities Management Division advertised via Orlando Sentinel, Demand Star, and Vendor Link, a request for statement of qualifications bid (RFP2022-001) for continuing service contracts for Roofing Installation and Repair Contractor Services for City facilities. Final submission of the statement of qualifications was due to the City by November 17, 2021.

In response to this request, we received a statement of qualifications from eight (8) contractors.

After evaluation of the responsive proposals, the evaluation committee determined that the following four (4) contractors best met the requirements of the proposal. Therefore, staff recommends entering into a continuing service contract with the following contractors:

- (1) Advanced Roofing, Inc.
- (2) Atlas Apex Roof LLC
- (3) Roof Control Services, Inc.
- (4) Springer-Peterson Roofing and Sheet Metal

Recommendation

Staff recommends City Commission approval to award continuing services for Roofing Installation and Repair Contractor Services for City facilities to the four (4) listed contractors.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. RFP2022-001 Authorization
2. Advanced Roofing, Inc. Agreement
3. Atlas Apex Rood LLC Agreement
4. Roof Control Services, Inc. Agreement
5. Springer-Peterson Roofing and Sheet Metal Agreement

AUTHORIZATION TO PLACE BID ON AGENDA

NOTE: THESE ITEMS WILL NOT BE PLACED ON THE AGENDA UNTIL AUTHORIZED SIGNATURES ARE OBTAINED AND RETURNED TO THE PURCHASING OFFICE. IF FUNDS ASSOCIATED WITH THE BUDGET PROJECT OR EXPENSE ACCOUNT CHARGEABLE FOR THIS EXPENDITURE ARE NOT ADEQUATE TO COVER THE COST, REQUESTING DEPT. WILL NOT AGENDA THIS ITEM UNTIL A COPY OF THE FUND TRANSFER APPROVED BY THE CITY MANAGER IS RECEIVED. BOTH PAGES OF THIS AUTHORIZATION FORM ARE TO BE COMPLETED RETURNED TO PURCHASING.

BID NUMBER: RFP2022-001
DATE: November 19, 2021
TO: Hany George, Public Facilities Manager
FROM: Brandon Durango, Procurement Manager
SUBJECT: Roofing Installation & Repair Contractor Services

COMMENTS: Subject bid opened on November 17, 2021 with a copy of abstract attached. Copies of the bids were electronically available after the opening. Purchasing advertised this October 24, 2021 with the Orlando Sentinel, Demand Star and Vendor Link. Demand Star notified 303 vendors, 11 vendors had downloaded the bid package, and Vendor Link had 23 vendors download the package after 979 vendors notified. When your evaluations are completed and you have your recommendation for award, please provide written justification below for Commission consideration for approval and send purchasing the results of the Commission approval and purchasing will post results on Demand Star and Vendor Link.

DEPARTMENT RECOMMENDATIONS:

☒ Purchase from low bidder.
☐ Other - Explain (attach additional sheets if necessary).

- Advanced Roofing Inc.
- Atlas Apex Roof LLC
- Roof Control Services Inc.
- Springer-Peterson Roofing and Sheet Metal

Hany George

Digitally signed by Hany George
Date: 2022.02.04 13:32:55 -05'00'

REVIEWED BY: _____ **DATE:** _____
APPROVED BY: _____ **DATE:** _____
DATE RETURNED TO PURCHASING: _____

**AGREEMENT BETWEEN CITY OF KISSIMMEE
and Advanced Roofing, Inc.**

THIS AGREEMENT is made and entered this ____ day of _____, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter "CITY") and Advanced Roofing, Inc. ., whose address is 200 Northstar Ct, Sanford, FL 32771 hereinafter referred to as ("CONTRACTOR"), and each represents as follows:

WHEREAS, CITY desires to retain services of competent and qualified Contractors to provide services to support CITY with on-going general roof installations and repairs on CITY buildings on an as-needed basis to minimize response time and improve customer service; and

WHEREAS, CITY advertised a Request for Proposals "RFP 2022-001 " for Roof Installation and Repair Contractor Services, on a continuing, as needed basis wherein firms submitted qualifications which were reviewed, evaluated, and scored by the Selection Committee; and

WHEREAS, based on the competitive selection process CITY has determined that Advanced Roofing, Inc. is qualified to provide the services and desires to award the Agreement to CONTRACTOR consistent with the terms, conditions and requirements of the above-referenced RFP.

NOW THEREFORE, in consideration of the mutual covenants, terms, and provisions contained herein, herein and for other good and value considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **TERM.** This Agreement shall be in effect for a term of three years from the date of execution with the option of two (2), one (1) year renewal periods.
3. **SCOPE OF SERVICES.** CONTRACTOR shall provide roof installation and repairs on an as needed basis in accordance with the Scope of Work, Bid Specifications and the Contractor's response to the RFP attached as Exhibit "A" and incorporated herein. CONTRACTOR acknowledges that CITY may retain other contractors, to perform similar work, and that work performed will be on an as needed basis, after receipt of a Work Order form from CITY, a sample is attached hereto as Exhibit "B." Upon receipt of a Work Order, CONTRACTOR shall provide CITY with a quote for the cost of installation and/or repair, and an estimate of the time necessary for completion of the work. CITY shall review the quote and determine whether it is in its best interest of to engage CONTRACTOR for the work. CITY shall provide CONTRACTOR authorization to proceed with the work, through approval signature of the Work Order. CONTRACTOR shall make a good faith effort to complete repairs in a timely manner. Upon knowledge of

- a delay, CONTRACTOR shall request a time extension, in writing, identifying the reason for the delay, with corresponding backup documentation and new completion date. CITY shall review the documentation and agree to time extensions for delivery delays in parts, or other reasons as the City in its sole discretion deems necessary and appropriate. Changes to the Scope of Work must be approved by CITY.

CITY may at any time require CONTRACTOR to remove any person employed in connection with the performance of the services who in the sole opinion of CITY is not suitable for the performance of the duties required. CONTRACTOR shall immediately remove the individual from performance of work under this Agreement, without hesitation or challenges to CITY

4. **REPRESENTATIONS.** CONTRACTOR hereby represents to the CITY that:

- a. They are qualified to perform these services by the State of Florida and has the experience and skill to perform the services required by this Agreement.
- b. They will provide and employ personnel qualified and experienced in their profession to perform the services required.
- c. They will comply with applicable federal, state and local laws and codes. CONTRACTOR and any personnel performing services shall secure all licenses and certifications necessary for initiation and completion of the services contained herein and shall be responsible for the payment of license and certifications fees, as applicable. If necessary, CONTRACTOR shall, upon request, provide the CITY with proof of certification compliance.
- d. CONTRACTOR will perform services in accordance with generally accepted professional standards in the most expeditious and economical manner and the extent consistent with the best interest of CITY.
- e. It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.

5. **INDEPENDENT CONTRACTOR.** The Parties hereto agree that CONTRACTOR is an independent contractor to the CITY. Nothing in this Agreement shall create or shall be deemed to create any fiduciary relationship or the relationship of principal and agent, employee and employer, partnership, joint venture, or any other similar or representative relationship between the parties hereto. CONTRACTOR and each of its employees will act as an independent contractor and not as employees of CITY.

6. **FEES.** CITY shall pay the CONTRACTOR for services and materials as set forth in the fee schedule contained in Attachment "B", the total contract amount shall not exceed the sum of T W O H U N D R E D T H O U S A N D DOLLARS (\$ 200,000.00) per project. The fee structure may only be revised by written amendment hereto, agreed to in writing by CITY and CONTRACTOR.

7. **PAYMENT.** Invoices shall provide details of all project expenses permitted in this Agreement. Upon review and approval of CONTRACTOR's invoice and verification that services have been rendered in conformity with this Agreement, CITY, through payment issued by the Public Works Department, shall pay CONTRACTOR in accordance with the Local Government Prompt Payment Act. Chapter 218, Part VII, Florida Statutes. CONTRACTOR shall not apply any late charges, interest or penalties to any invoice or charges for services until 30 days from CITY's receipt of the invoice. If this Agreement is

terminated for convenience for any reason, then CONTRACTOR shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred, including lost profit, to the effective date of termination.

8. **INSURANCE.** CONTRACTOR is required to submit to CITY Certificates of Insurance naming the CITY as an additional insured. Said Certificate of Insurance shall also provide that at least thirty (30) days written notice shall be given to CITY. Said Policies shall be issued and underwritten by a licensed insurer, licensed in the State of Florida. During the term of the Agreement and any renewals, CONTRACTOR at its sole cost and expenses shall maintain insurance coverage as follows:

- A. **Professional Liability Insurance:** CONTRACTOR must maintain a comprehensive liability policy, including negligent acts, errors and omissions coverage in a minimum amount of \$500,000.00 per claim, issued to the CONTRACTOR as the insured. Said policy shall be underwritten by an insurer with a rating classification of either A-, A or A+ and a financial size category rating of Class IV or higher.
- B. **Comprehensive General Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00 aggregate.
- C. **Comprehensive Automobile Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
- D. **Workers Compensation:** CONTRACTOR will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.

9. **TERMINATION FOR CAUSE.**

- A. CITY may terminate this Agreement based on any of the following reasons:
 - 1. In the event of any breach by CONTRACTOR of the conditions set forth in this Contract, including any non-performance of duties, CITY's Designated Representative may send a certified letter to CONTRACTOR requesting that CONTRACTOR show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to CITY within fifteen (15) days of the receipt by CONTRACTOR of said show cause notice, CITY may consider CONTRACTOR to be in default and may immediately terminate this Agreement.
 - 2. 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.
- B. The CONTRACTOR may terminate this Agreement for cause if CITY fails to

pay the CONTRACTOR as provided herein, or the CONTRACTOR can no longer adequately meet the scope of service in the Agreement. The CONTRACTOR shall notify the CITY of the intention to terminate with thirty (30) days notice provided by certified letter to the CITY Designated Representative. If adequate assurances are not given to the CONTRACTOR within fifteen (15) days of the receipt by the CITY of said show cause notice, then the CONTRACTOR may consider the CITY to be in default and may immediately terminate this Agreement.

10. **TERMINATION FOR CONVENIENCE.** CITY reserves the right to terminate the Agreement in whole or in part, including termination specific to location, by giving the CONTRACTOR written notice at least thirty (30) days prior to effective date of termination. Upon receipt of termination from CITY, CONTRACTOR shall only provide those services specifically approved or directed by the CITY. All other rights and duties of the parties under the Agreement shall continue during such notice period, and the CITY shall continue to be responsible to CONTRACTOR for the payment of any obligation to the extent such responsibility has not been excused by breach or default of the Contractor.

Upon termination, CONTRACTOR shall invoice CITY for all amounts not previously billed and due to CONTRACTOR at that time. CONTRACTOR shall not be entitled to any additional fees nor expenses for any work commenced or expenses incurred after the notice of termination was received by CONTRACTOR, unless specifically approved or requested by CITY. No amount shall be allowed for anticipated profit on unperformed services or other work. CONTRACTOR shall however, be entitled to payment for services commenced and approved by CITY prior to receipt of notice, or with the expressed written consent of CITY, prior to the effective date of termination.

11. **INDEMNIFICATION.** To the extent permitted by law, CONTRACTOR hereby releases and waives all claims against CITY, its officers, employees, agents, independent Contractors for any injury or damaged to the person, property, or business of CONTRACTOR agents, employees, sub-Contractors, or other persons, for which injury or damaged results from any act, neglect, occurrence, or condition in or about any CITY properties whether such damage is caused by CITY or any other person. Nothing in the agreement shall be construed as a waiver of CITY's statutory sovereign immunity pursuant to Section 768.28, Florida Statutes.

CONTRACTOR agrees to indemnify and hold harmless the CITY, its agents, officers, employees against any and all claims, demand, cost, and expenses of every kind and nature, including reasonable attorney fees for the enforcement, defense, or appeals thereof arise from CONTRACTOR performance of the Agreement or any breach or default of CONTRACTOR.

12. **NON - DISCRIMINATION.** CONTRACTOR agrees not to discriminate against any citizen, employee or employment applicant on the basis of race, color, religion, national origin, ancestry, sex, marital status or age in the performance of the obligations of this Agreement. Violation of this provision shall be treated as a breach of this Agreement.
13. **NONASSIGNMENT.** CONTRACTOR shall not, without receiving prior consent of CITY, assign this Agreement or any portion hereof. This Agreement is hereby deemed to be of a personal service contract nature, thus, subcontracting any portion of this Agreement is prohibited. Any unauthorized assignment shall be void and shall terminate the Agreement at the CITY's option. CONTRACTOR's interest in this Agreement is not assignable by operation of law.
14. **ACCESS TO RECORDS / AUDIT.** CONTRACTOR shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services and supply of materials under this Agreement. All-time records and cost data shall be maintained in accordance with generally accepted accounting principles. CONTRACTOR 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. 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 CONTRACTOR's books, records, documents, time records and cost accounts, and other evidence shall be at CITY's expense.
The CONTRACTOR shall maintain and allow access to the records 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.
15. **E-VERIFY.** In compliance with Section 448.095, Fla. Stat., CONTRACTOR and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- a CONTRACTOR shall require each of its subcontractors to provide CONTRACTOR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. CONTRACTOR shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.
 - b CITY, CONTRACTOR, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c CITY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but CONTRACTOR otherwise complied, shall promptly notify CONTRACTOR and CONTRACTOR shall immediately terminate the contract with the subcontractor.

- d Termination of this Agreement under the provisions of this section is not a breach of contract and may not be considered such. Any Agreement termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. CONTRACTOR acknowledges that upon termination of this Agreement by the City for a violation of this section by CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year. CONTRACTOR further acknowledges that CONTRACTOR is liable for any additional costs incurred by the CITY as a result of termination of any contract for a violation of this section.
- e *Subcontracts.* CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

16. **PUBLIC RECORDS.** CONTRACTOR acknowledges 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, CONTRACTOR shall keep and maintain public records required by the CITY to perform the service.

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

- d. Upon notice to CONTRACTOR of a request to inspect or copy public records relating to CITY's agreement for services, CONTRACTOR shall provide the records to CITY or allow the records to be inspected or copied within a reasonable time.
 - e. If CONTRACTOR does not comply with CITY's request for records, such failure shall constitute a material breach and the Agreement shall terminate upon notice by the CITY.
 - f. If the CONTRACTOR fails to provide the public records to CITY within a reasonable time may be subject to penalties under Florida Statutes §119.1
17. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.
18. **JURY TRIAL WAIVER/VENUE/WAIVER OF ATTORNEY FEES.** CONTRACTOR agrees to waive the right to a jury trial in any action, proceeding, or counterclaim. Venue shall be Osceola County, Florida. Each Party waives the right to attorney fees in any action to enforce or interpret this Agreement.
19. **WAIVER.** No failure of CITY to insist upon strict performance in any one or more terms of this Agreement, nor any failure of CITY to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the CITY may have, or future rights to enforce compliance.
20. **NOTICES.** All notices and demands shall be sent via U.S. Certified Mail, return receipt

As to CONTRACTOR:

Advanced Roofing, Inc.
Attn: Jason Carruth
200 Northstar Ct.
Sanford, FL 32771

As to CITY:

CITY OF KISSIMMEE
Public Works & Engineering Dept.
Attn: Hany George
104 N. Alaska Avenue
Kissimmee, FL 34741

21. **ENTIRETY OF AGREEMENT.** This Agreement, including any attachments and exhibits referred to herein shall constitute the entire Agreement of the Parties. Any prior understanding or representations of any kind preceding the date of this Agreement shall not be binding on either party except as incorporated herein.
22. **MODIFICATIONS.** Any modifications or additional obligations assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party.
23. **BINDING.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.

24. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
23. **ATTACHMENTS.** The Attachments listed hereto are incorporated by reference and will be binding on the Parties. In the event of any inconsistency between the Attachments, the provision of this Agreement will govern and control.

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto have through their duly authorized representatives, approved and executed this Agreement as of the date set forth below:

CONTRACTOR

By: [Signature]

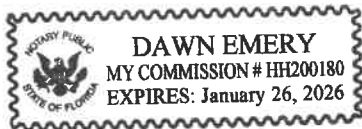
Title: VICE PRESIDENT

Date: 1/26/2021

STATE OF FLORIDA
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 26th day of January, 2022, by means of ☒ physical presence or ☐ online notarization, by Jason Carnuth as VP for Advanced Roofing, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: Dawn Emery

Print Name: Dawn Emery

My Commission Expires: 1-26-26

CITY OF KISSIMMEE

By: _____

Olga Gonzalez, Mayor-Commissioner

Date: _____

ATTEST:

Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

City Attorney

Exhibit A

ABSTRACT OF BIDS				City of Kissimmee				Page 1 of 2			
INVITATION/BID# RFP2022-001 Roofing Installation & Repair Contractor Services											
OPENING DATE: 11/17/2021 TIME: 2:30PM				REQ. DEPARTMENT: Hany George – Public Facilities Supervisor							
VENDOR NAME CITY AND STATE	Advanced Roofing Int. Ft. Lauderdale, FL	Atlas Apex Roof LLC Ft. Lauderdale, FL	Baker Roofing Com. Raleigh, N.C.	Porter Roofing Morrison, TN	RJ Group Port Orange, FL	Roof Control Srvs Inc Clermont, FL	Springer-Peterson Roofing & Sheet Metal Eaton Park, FL	RMS Orlando Inc. Orlando, FL			
Category 1											
Foreman	\$75/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour			
Installers	\$65/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour			
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour			
Materials	15%	10%	15%	15%	15%	25%	15%	20%			
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%			
Category 2											
Foreman	\$70/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour			
Installers	\$60/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour			
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour			
Materials	15%	10%	15%	15%	15%	25%	15%	30%			
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%			

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

Exhibit A

City of Kissimmee										Page 2 of 2
ABSTRACT OF BIDS										
INVITATION/BID# RFP2022-001 Roofing Installation & Repair Contractor Services										
OPENING DATE: 11/17/2021 TIME: 2:30PM										
REQ. DEPARTMENT: Hany George – Public Facilities Supervisor										
VENDOR NAME CITY AND STATE	Advanced Roofing Int. Ft. Lauderdale, FL	Atlas Apex Roof LLC Ft. Lauderdale, FL	Baker Roofing Com. Raleigh, N.C.	Porter Roofing Morrison, TN	RJ Group Port Orange, FL	Roof Control Srvs Inc Clermont, FL	Springer-Peterson Roofing & Sheet Metal Eaton Park, FL	RMS Orlando Inc. Orlando, FL		
Category 3										
Foreman	\$65/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour		
Installers	\$60/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour		
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour		
Materials	15%	10%	15%	15%	15%	25%	15%	30%		
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%		

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

Exhibit B

	CITY OF KISSIMMEE PUBLIC WORKS & ENGINEERING WORK ORDER FORM	Work Order #: Purchase Order#:						
DATE: _____								
Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to _____ with the following described work as agreed upon 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 in accordance with the Scope of Services, 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 the official Notice to Proceed from the City.								
TASK	FEE							
1)								
2)								
3)								
4)								
5)								
6)								
7)								
8)								
	\$ -							
Contract Dollars:		\$0.00						
NET Dollars for this Work Order/Addendum (Addition/Subtraction):		\$0.00						
CONTRACT TOTAL DOLLARS:		\$0.00						
<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;"> City Engineer: _____ City Engineer (Signature) </td> </tr> <tr> <td style="vertical-align: top;"> City Commission Approval Date: _____ </td> <td style="vertical-align: top;"> Approved By: _____ Director, PW&E (Signature) </td> </tr> </table>			Accepted By: _____ (Signature)	Requested By: _____ (Signature)	Title/Position: _____	City Engineer: _____ City Engineer (Signature)	City Commission Approval Date: _____	Approved By: _____ Director, PW&E (Signature)
Accepted By: _____ (Signature)	Requested By: _____ (Signature)							
Title/Position: _____	City Engineer: _____ City Engineer (Signature)							
City Commission Approval Date: _____	Approved By: _____ Director, PW&E (Signature)							

Exhibit B



CITY OF KISSIMMEE PUBLIC WORKS & ENGINEERING WORK ORDER FORM

Work Order #:

Purchase Order#:

DATE:

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to _____ with the following described work as agreed upon 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 in accordance with the Scope of Services, 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 the official Notice to Proceed from the City.

TASK		FEE
1)		
2)		
3)		
4)		
5)		
		\$ -
Contract Dollars:		\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):		\$0.00
CONTRACT TOTAL DOLLARS:		\$0.00

Accepted By: _____
(Signature)

Title/Position:

City Engineer: _____

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)

**AGREEMENT BETWEEN CITY OF KISSIMMEE
and Atlas Apex Roofing, LLC.**

THIS AGREEMENT is made and entered this ____ day of _____, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter "CITY") and Atlas Apex Roofing, LLC., whose address is 281 NE 32nd Street, Fort Lauderdale, FL 33334 hereinafter referred to as ("CONTRACTOR"), and each represents as follows:

WHEREAS, CITY desires to retain services of competent and qualified Contractors to provide services to support CITY with on-going general roof installations and repairs on CITY buildings on an as-needed basis to minimize response time and improve customer service; and

WHEREAS, CITY advertised a Request for Proposals "RFP 2022-001 " for Roof Installation and Repair Contractor Services, on a continuing, as needed basis wherein firms submitted qualifications which were reviewed, evaluated, and scored by the Selection Committee; and

WHEREAS, based on the competitive selection process CITY has determined that Atlas Apex Roofing, LLC is qualified to provide the services and desires to award the Agreement to CONTRACTOR consistent with the terms, conditions and requirements of the above-referenced RFP.

NOW THEREFORE, in consideration of the mutual covenants, terms, and provisions contained herein, herein and for other good and value considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **TERM.** This Agreement shall be in effect for a term of three years from the date of execution with the option of two (2), one (1) year renewal periods.
3. **SCOPE OF SERVICES.** CONTRACTOR shall provide roof installation and repairs on an as needed basis in accordance with the Scope of Work, Bid Specifications and the Contractor's response to the RFP attached as Exhibit "A" and incorporated herein. CONTRACTOR acknowledges that CITY may retain other contractors, to perform similar work, and that work performed will be on an as needed basis, after receipt of a Work Order form from CITY, a sample is attached hereto as Exhibit "B." Upon receipt of a Work Order, CONTRACTOR shall provide CITY with a quote for the cost of installation and/or repair, and an estimate of the time necessary for completion of the work. CITY shall review the quote and determine whether it is in its best interest of to engage CONTRACTOR for the work. CITY shall provide CONTRACTOR authorization to proceed with the work, through approval signature of the Work Order. CONTRACTOR shall make a good faith effort to complete repairs in a timely manner. Upon knowledge of

- a. delay, CONTRACTOR shall request a time extension, in writing, identifying the reason for the delay, with corresponding backup documentation and new completion date. CITY shall review the documentation and agree to time extensions for delivery delays in parts, or other reasons as the City in its sole discretion deems necessary and appropriate. Changes to the Scope of Work must be approved by CITY.

CITY may at any time require CONTRACTOR to remove any person employed in connection with the performance of the services who in the sole opinion of CITY is not suitable for the performance of the duties required. CONTRACTOR shall immediately remove the individual from performance of work under this Agreement, without hesitation or challenges to CITY

4. **REPRESENTATIONS.** CONTRACTOR hereby represents to the CITY that:

- a. They are qualified to perform these services by the State of Florida and has the experience and skill to perform the services required by this Agreement.
- b. They will provide and employ personnel qualified and experienced in their profession to perform the services required.
- c. They will comply with applicable federal, state and local laws and codes. CONTRACTOR and any personnel performing services shall secure all licenses and certifications necessary for initiation and completion of the services contained herein and shall be responsible for the payment of license and certifications fees, as applicable. If necessary, CONTRACTOR shall, upon request, provide the CITY with proof of certification compliance.
- d. CONTRACTOR will perform services in accordance with generally accepted professional standards in the most expeditious and economical manner and the extent consistent with the best interest of CITY.
- e. It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.

5. **INDEPENDENT CONTRACTOR.** The Parties hereto agree that CONTRACTOR is an independent contractor to the CITY. Nothing in this Agreement shall create or shall be deemed to create any fiduciary relationship or the relationship of principal and agent, employee and employer, partnership, joint venture, or any other similar or representative relationship between the parties hereto. CONTRACTOR and each of its employees will act as an independent contractor and not as employees of CITY.

6. **FEES.** CITY shall pay the CONTRACTOR for services and materials as set forth in the fee schedule contained in Attachment "B", the total contract amount shall not exceed the sum of T W O H U N D R E D T H O U S A N D DOLLARS (\$ 200,000.00) per project. The fee structure may only be revised by written amendment hereto, agreed to in writing by CITY and CONTRACTOR.

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terminated for convenience for any reason, then CONTRACTOR shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred, including lost profit, to the effective date of termination.

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- A. **Professional Liability Insurance:** CONTRACTOR must maintain a comprehensive liability policy, including negligent acts, errors and omissions coverage in a minimum amount of \$500,000.00 per claim, issued to the CONTRACTOR as the insured. Said policy shall be underwritten by an insurer with a rating classification of either A-, A or A+ and a financial size category rating of Class IV or higher.
- B. **Comprehensive General Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00 aggregate.
- C. **Comprehensive Automobile Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
- D. **Workers Compensation:** CONTRACTOR will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.

9. **TERMINATION FOR CAUSE.**

- A. CITY may terminate this Agreement based on any of the following reasons:
 - 1. In the event of any breach by CONTRACTOR of the conditions set forth in this Contract, including any non-performance of duties, CITY's Designated Representative may send a certified letter to CONTRACTOR requesting that CONTRACTOR show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to CITY within fifteen (15) days of the receipt by CONTRACTOR of said show cause notice, CITY may consider CONTRACTOR to be in default and may immediately terminate this Agreement.
 - 2. 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.
- B. The CONTRACTOR may terminate this Agreement for cause if CITY fails to

pay the CONTRACTOR as provided herein, or the CONTRACTOR can no longer adequately meet the scope of service in the Agreement. The CONTRACTOR shall notify the CITY of the intention to terminate with thirty (30) days notice provided by certified letter to the CITY Designated Representative. If adequate assurances are not given to the CONTRACTOR within fifteen (15) days of the receipt by the CITY of said show cause notice, then the CONTRACTOR may consider the CITY to be in default and may immediately terminate this Agreement.

10. **TERMINATION FOR CONVENIENCE.** CITY reserves the right to terminate the Agreement in whole or in part, including termination specific to location, by giving the CONTRACTOR written notice at least thirty (30) days prior to effective date of termination. Upon receipt of termination from CITY, CONTRACTOR shall only provide those services specifically approved or directed by the CITY. All other rights and duties of the parties under the Agreement shall continue during such notice period, and the CITY shall continue to be responsible to CONTRACTOR for the payment of any obligation to the extent such responsibility has not been excused by breach or default of the Contractor.

Upon termination, CONTRACTOR shall invoice CITY for all amounts not previously billed and due to CONTRACTOR at that time. CONTRACTOR shall not be entitled to any additional fees nor expenses for any work commenced or expenses incurred after the notice of termination was received by CONTRACTOR, unless specifically approved or requested by CITY. No amount shall be allowed for anticipated profit on unperformed services or other work. CONTRACTOR shall however, be entitled to payment for services commenced and approved by CITY prior to receipt of notice, or with the expressed written consent of CITY, prior to the effective date of termination.

11. **INDEMNIFICATION.** To the extent permitted by law, CONTRACTOR hereby releases and waives all claims against CITY, its officers, employees, agents, independent Contractors for any injury or damaged to the person, property, or business of CONTRACTOR agents, employees, sub-Contractors, or other persons, for which injury or damaged results from any act, neglect, occurrence, or condition in or about any CITY properties whether such damage is caused by CITY or any other person. Nothing in the agreement shall be construed as a waiver of CITY's statutory sovereign immunity pursuant to Section 768.28, Florida Statutes.

CONTRACTOR agrees to indemnify and hold harmless the CITY, its agents, officers, employees against any and all claims, demand, cost, and expenses of every kind and nature, including reasonable attorney fees for the enforcement, defense, or appeals thereof arise from CONTRACTOR performance of the Agreement or any breach or default of CONTRACTOR.

12. **NON - DISCRIMINATION.** CONTRACTOR agrees not to discriminate against any citizen, employee or employment applicant on the basis of race, color, religion, national origin, ancestry, sex, marital status or age in the performance of the obligations of this Agreement. Violation of this provision shall be treated as a breach of this Agreement.
13. **NONASSIGNMENT.** CONTRACTOR shall not, without receiving prior consent of CITY, assign this Agreement or any portion hereof. This Agreement is hereby deemed to be of a personal service contract nature, thus, subcontracting any portion of this Agreement is prohibited. Any unauthorized assignment shall be void and shall terminate the Agreement at the CITY's option. CONTRACTOR's interest in this Agreement is not assignable by operation of law.
14. **ACCESS TO RECORDS / AUDIT.** CONTRACTOR shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services and supply of materials under this Agreement. All-time records and cost data shall be maintained in accordance with generally accepted accounting principles. CONTRACTOR 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. 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 CONTRACTOR's books, records, documents, time records and cost accounts, and other evidence shall be at CITY's expense.
The CONTRACTOR shall maintain and allow access to the records 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.
15. **E-VERIFY.** In compliance with Section 448.095, Fla. Stat., CONTRACTOR and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- a CONTRACTOR shall require each of its subcontractors to provide CONTRACTOR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. CONTRACTOR shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.
 - b CITY, CONTRACTOR, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c CITY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but CONTRACTOR otherwise complied, shall promptly notify CONTRACTOR and CONTRACTOR shall immediately terminate the contract with the subcontractor.

- d Termination of this Agreement under the provisions of this section is not a breach of contract and may not be considered such. Any Agreement termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. CONTRACTOR acknowledges that upon termination of this Agreement by the City for a violation of this section by CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year. CONTRACTOR further acknowledges that CONTRACTOR is liable for any additional costs incurred by the CITY as a result of termination of any contract for a violation of this section.
- e *Subcontracts.* CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

16. PUBLIC RECORDS. CONTRACTOR acknowledges 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, CONTRACTOR shall keep and maintain public records required by the CITY to perform the service.

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

- d. Upon notice to CONTRACTOR of a request to inspect or copy public records relating to CITY's agreement for services, CONTRACTOR shall provide the records to CITY or allow the records to be inspected or copied within a reasonable time.
 - e. If CONTRACTOR does not comply with CITY's request for records, such failure shall constitute a material breach and the Agreement shall terminate upon notice by the CITY.
 - f. If the CONTRACTOR fails to provide the public records to CITY within a reasonable time may be subject to penalties under Florida Statutes §119.1
17. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.
18. **JURY TRIAL WAIVER/VENUE/WAIVER OF ATTORNEY FEES.** CONTRACTOR agrees to waive the right to a jury trial in any action, proceeding, or counterclaim. Venue shall be Osceola County, Florida. Each Party waives the right to attorney fees in any action to enforce or interpret this Agreement.
19. **WAIVER.** No failure of CITY to insist upon strict performance in any one or more terms of this Agreement, nor any failure of CITY to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the CITY may have, or future rights to enforce compliance.
20. **NOTICES.** All notices and demands shall be sent via U.S. Certified Mail, return receipt

As to CONTRACTOR:
Atlas Apex Roofing, LLC
Attn: Henry Gembala, V.P.
281 NE 32nd Street
Fort Lauderdale, FL 33334

As to CITY:
CITY OF KISSIMMEE
Public Works & Engineering Dept.
Attn: Hany George
104 N. Alaska Avenue
Kissimmee, FL 34741

21. **ENTIRETY OF AGREEMENT.** This Agreement, including any attachments and exhibits referred to herein shall constitute the entire Agreement of the Parties. Any prior understanding or representations of any kind preceding the date of this Agreement shall not be binding on either party except as incorporated herein.
22. **MODIFICATIONS.** Any modifications or additional obligations assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party.
23. **BINDING.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.

24. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
23. **ATTACHMENTS.** The Attachments listed hereto are incorporated by reference and will be binding on the Parties. In the event of any inconsistency between the Attachments, the provision of this Agreement will govern and control.

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto have through their duly authorized representatives, approved and executed this Agreement as of the date set forth below:



CONTRACTOR

By: [Signature] Henry Gembala

Title: Vice President

Date: 01/31/2022

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 31st day of January, 2022, by means of ☒ physical presence or ☐ online notarization, by Henry Gembala as Vice President for Atlas Apex Roofing, LLC a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: [Signature]
Print Name: Diana Magliarisi
My Commission Expires: _____

CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor-Commissioner

Date: _____

ATTEST:

Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

City Attorney

Exhibit A

ABSTRACT OF BIDS

City of Kissimmee

Page 1 of 2

INVITATION/BID# RFP2022-001 Roofing Installation & Repair Contractor Services

OPENING DATE: 11/17/2021

TIME: 2:30PM

REQ. DEPARTMENT: Hany George – Public Facilities Supervisor

VENDOR NAME CITY AND STATE	Advanced Roofing Int. Ft. Lauderdale, FL	Atlas Apex Roof LLC Ft. Lauderdale, FL	Baker Roofing Com. Raleigh, N.C.	Porter Roofing Morrison, TN	RJ Group Port Orange, FL	Roof Control Srvs Inc Clermont, FL	Springer-Peterson Roofing & Sheet Metal Eaton Park, FL	RMS Orlando Inc. Orlando, FL
Category 1								
Foreman	\$75/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$65/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	20%
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%
Category 2								
Foreman	\$70/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$60/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	30%
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Notice of decision or intended decision concerning a bid solicitation or award may be given by posting the bid tabulation or recommended award at the location where the bids were opened or posted electronically on the City's website www.kissimmee.org. Failure to file a protest within the deadlines prescribed shall constitute a waiver of protest proceedings.

Exhibit A

ABSTRACT OF BIDS

City of Kissimmee

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Category 3								
Foreman	\$65/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
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**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

Work Order #:

Purchase Order#:

DATE: _____

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to _____ with the following described work as agreed upon 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 in accordance with the Scope of Services, 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 the official Notice to Proceed from the City.

TASK	FEE
1)	
2)	
3)	
4)	
5)	
6)	
7)	
8)	
	\$ -

Contract Dollars:	\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$0.00

Accepted By: _____
(Signature)

Requested By: _____
(Signature)

Title/Position: _____

City Engineer: _____
City Engineer (Signature)

City Commission Approval Date: _____

Approved By: _____
Director, PW&E (Signature)



**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

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(Signature)

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City Engineer (Signature)

Approved By: _____
Director, PW&E (Signature)

Approved as to Form and Legality:

City Attorney (Signature)

Requested By: _____
(Signature)

Approved By: _____
City Manager (Signature)

Approved By: _____
Mayor (Signature)

City Commission Approval Date: _____
(If Required)

**AGREEMENT BETWEEN CITY OF KISSIMMEE
and Roof Control Services, Inc.**

THIS AGREEMENT is made and entered this ____ day of _____, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter "CITY") and Roof Control Services, Inc., whose address is 936 10th St., Clermont, FL 34711 hereinafter referred to as ("CONTRACTOR"), and each represents as follows:

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- c. They will comply with applicable federal, state and local laws and codes. CONTRACTOR and any personnel performing services shall secure all licenses and certifications necessary for initiation and completion of the services contained herein and shall be responsible for the payment of license and certifications fees, as applicable. If necessary, CONTRACTOR shall, upon request, provide the CITY with proof of certification compliance.
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- B. **Comprehensive General Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00 aggregate.
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- D. **Workers Compensation:** CONTRACTOR will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.

9. **TERMINATION FOR CAUSE.**

- A. CITY may terminate this Agreement based on any of the following reasons:
 - 1. In the event of any breach by CONTRACTOR of the conditions set forth in this Contract, including any non-performance of duties, CITY's Designated Representative may send a certified letter to CONTRACTOR requesting that CONTRACTOR show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to CITY within fifteen (15) days of the receipt by CONTRACTOR of said show cause notice, CITY may consider CONTRACTOR to be in default and may immediately terminate this Agreement.
 - 2. 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.
- B. The CONTRACTOR may terminate this Agreement for cause if CITY fails to

pay the CONTRACTOR as provided herein, or the CONTRACTOR can no longer adequately meet the scope of service in the Agreement. The CONTRACTOR shall notify the CITY of the intention to terminate with thirty (30) days notice provided by certified letter to the CITY Designated Representative. If adequate assurances are not given to the CONTRACTOR within fifteen (15) days of the receipt by the CITY of said show cause notice, then the CONTRACTOR may consider the CITY to be in default and may immediately terminate this Agreement.

10. **TERMINATION FOR CONVENIENCE.** CITY reserves the right to terminate the Agreement in whole or in part, including termination specific to location, by giving the CONTRACTOR written notice at least thirty (30) days prior to effective date of termination. Upon receipt of termination from CITY, CONTRACTOR shall only provide those services specifically approved or directed by the CITY. All other rights and duties of the parties under the Agreement shall continue during such notice period, and the CITY shall continue to be responsible to CONTRACTOR for the payment of any obligation to the extent such responsibility has not been excused by breach or default of the Contractor.

Upon termination, CONTRACTOR shall invoice CITY for all amounts not previously billed and due to CONTRACTOR at that time. CONTRACTOR shall not be entitled to any additional fees nor expenses for any work commenced or expenses incurred after the notice of termination was received by CONTRACTOR, unless specifically approved or requested by CITY. No amount shall be allowed for anticipated profit on unperformed services or other work. CONTRACTOR shall however, be entitled to payment for services commenced and approved by CITY prior to receipt of notice, or with the expressed written consent of CITY, prior to the effective date of termination.

11. **INDEMNIFICATION.** To the extent permitted by law, CONTRACTOR hereby releases and waives all claims against CITY, its officers, employees, agents, independent Contractors for any injury or damaged to the person, property, or business of CONTRACTOR agents, employees, sub-Contractors, or other persons, for which injury or damaged results from any act, neglect, occurrence, or condition in or about any CITY properties whether such damage is caused by CITY or any other person. Nothing in the agreement shall be construed as a waiver of CITY's statutory sovereign immunity pursuant to Section 768.28, Florida Statutes.

CONTRACTOR agrees to indemnify and hold harmless the CITY, its agents, officers, employees against any and all claims, demand, cost, and expenses of every kind and nature, including reasonable attorney fees for the enforcement, defense, or appeals thereof arise from CONTRACTOR performance of the Agreement or any breach or default of CONTRACTOR.

12. **NON - DISCRIMINATION.** CONTRACTOR agrees not to discriminate against any citizen, employee or employment applicant on the basis of race, color, religion, national origin, ancestry, sex, marital status or age in the performance of the obligations of this Agreement. Violation of this provision shall be treated as a breach of this Agreement.
13. **NONASSIGNMENT.** CONTRACTOR shall not, without receiving prior consent of CITY, assign this Agreement or any portion hereof. This Agreement is hereby deemed to be of a personal service contract nature, thus, subcontracting any portion of this Agreement is prohibited. Any unauthorized assignment shall be void and shall terminate the Agreement at the CITY's option. CONTRACTOR's interest in this Agreement is not assignable by operation of law.
14. **ACCESS TO RECORDS / AUDIT.** CONTRACTOR shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services and supply of materials under this Agreement. All-time records and cost data shall be maintained in accordance with generally accepted accounting principles. CONTRACTOR 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. 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 CONTRACTOR's books, records, documents, time records and cost accounts, and other evidence shall be at CITY's expense.
The CONTRACTOR shall maintain and allow access to the records 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.
15. **E-VERIFY.** In compliance with Section 448.095, Fla. Stat., CONTRACTOR and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- a CONTRACTOR shall require each of its subcontractors to provide CONTRACTOR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. CONTRACTOR shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.
 - b CITY, CONTRACTOR, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c CITY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but CONTRACTOR otherwise complied, shall promptly notify CONTRACTOR and CONTRACTOR shall immediately terminate the contract with the subcontractor.

- d Termination of this Agreement under the provisions of this section is not a breach of contract and may not be considered such. Any Agreement termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. CONTRACTOR acknowledges that upon termination of this Agreement by the City for a violation of this section by CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year. CONTRACTOR further acknowledges that CONTRACTOR is liable for any additional costs incurred by the CITY as a result of termination of any contract for a violation of this section.
- e *Subcontracts.* CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

16. **PUBLIC RECORDS.** CONTRACTOR acknowledges 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, CONTRACTOR shall keep and maintain public records required by the CITY to perform the service.

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

- d. Upon notice to CONTRACTOR of a request to inspect or copy public records relating to CITY's agreement for services, CONTRACTOR shall provide the records to CITY or allow the records to be inspected or copied within a reasonable time.
- e. If CONTRACTOR does not comply with CITY's request for records, such failure shall constitute a material breach and the Agreement shall terminate upon notice by the CITY.
- f. If the CONTRACTOR fails to provide the public records to CITY within a reasonable time may be subject to penalties under Florida Statutes §119.1

17. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.

18. **JURY TRIAL WAIVER/VENUE/WAIVER OF ATTORNEY FEES.** CONTRACTOR agrees to waive the right to a jury trial in any action, proceeding, or counterclaim. Venue shall be Osceola County, Florida. Each Party waives the right to attorney fees in any action to enforce or interpret this Agreement.

19. **WAIVER.** No failure of CITY to insist upon strict performance in any one or more terms of this Agreement, nor any failure of CITY to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the CITY may have, or future rights to enforce compliance.

20. **NOTICES.** All notices and demands shall be sent via U.S. Certified Mail, return receipt

As to CONTRACTOR:

Roof Control Services, Inc.
Attn: Jimmy T. Griffin / President
936 10th St.
Clermont, FL 34711

As to CITY:

CITY OF KISSIMMEE
Public Works & Engineering Dept.
Attn: Hany George
104 N. Alaska Avenue
Kissimmee, FL 34741

21. **ENTIRETY OF AGREEMENT.** This Agreement, including any attachments and exhibits referred to herein shall constitute the entire Agreement of the Parties. Any prior understanding or representations of any kind preceding the date of this Agreement shall not be binding on either party except as incorporated herein.

22. **MODIFICATIONS.** Any modifications or additional obligations assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party.

23. **BINDING.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.

24. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
23. **ATTACHMENTS.** The Attachments listed hereto are incorporated by reference and will be binding on the Parties. In the event of any inconsistency between the Attachments, the provision of this Agreement will govern and control.

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto have through their duly authorized representatives, approved and executed this Agreement as of the date set forth below:

CONTRACTOR

By: Constance McNamee

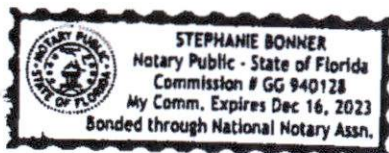
Title: Service Manager

Date: 01/28/2022

STATE OF FLORIDA
COUNTY OF Lake

The foregoing instrument was acknowledged before me this 28 day of January, 2022, by means of ☒ physical presence or ☐ online notarization, by Constance McNamee as Service Manager for Port Control Service, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: Stephanie Bonner

Print Name: Stephanie Bonner

My Commission Expires: 12/16/23

CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor-Commissioner

Date: _____

ATTEST:

Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

City Attorney

Exhibit A

ABSTRACT OF BIDS

City of Kissimmee

Page 1 of 2

INVITATION/BID# RFP2022-001 Roofing Installation & Repair Contractor Services

OPENING DATE: 11/17/2021
TIME: 2:30PM

REQ. DEPARTMENT: Hany George – Public Facilities Supervisor

VENDOR NAME CITY AND STATE	Advanced Roofing Int. Ft. Lauderdale, FL	Atlas Apex Roof LLC Ft. Lauderdale, FL	Baker Roofing Com. Raleigh, N.C.	Porter Roofing Morrison, TN	RJ Group Port Orange, FL	Roof Control Srvs Inc Clermont, FL	Springer-Peterson Roofing & Sheet Metal Eaton Park, FL	RMS Orlando Inc. Orlando, FL
Category 1								
Foreman	\$75/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$65/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	20%
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%
Category 2								
Foreman	\$70/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$60/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	30%
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%

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

Exhibit A

ABSTRACT OF BIDS

City of Kissimmee

Page 2 of 2

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**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

Work Order #:

Purchase Order#:

DATE: _____

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to _____ with the following described work as agreed upon 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 in accordance with the Scope of Services, 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 the official Notice to Proceed from the City.

TASK	FEE
1)	
2)	
3)	
4)	
5)	
6)	
7)	
8)	
	\$ -

Contract Dollars:		\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):		\$0.00
CONTRACT TOTAL DOLLARS:		\$0.00

Accepted By: _____ (Signature)	Requested By: _____ (Signature)
Title/Position: _____	City Engineer: _____ City Engineer (Signature)
City Commission Approval Date: _____	Approved By: _____ Director, PW&E (Signature)



**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

Work Order #:

Purchase Order#:

DATE:

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TASK

FEE

1)	
2)	
3)	
4)	
5)	
	\$ -

Contract Dollars: \$0.00

NET Dollars for this Work Order/Addendum (Addition/Subtraction): \$0.00

CONTRACT TOTAL DOLLARS: \$0.00Accepted By: _____
(Signature)Requested By: _____
(Signature)

Title/Position: _____

Approved By: _____
City Manager (Signature)City Engineer: _____
City Engineer (Signature)Approved By: _____
Mayor (Signature)Approved By: _____
Director, PW&E (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

**AGREEMENT BETWEEN CITY OF KISSIMMEE
and Springer-Peterson Roofing and Sheet Metal Inc.**

THIS AGREEMENT is made and entered this ____ day of _____, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter "CITY") and Spring-Peterson Roofing and Sheet Metal Inc., whose address is P.O. Box 1648, Eaton Park, FL 33840 hereinafter referred to as ("CONTRACTOR"), and each represents as follows:

WHEREAS, CITY desires to retain services of competent and qualified Contractors to provide services to support CITY with on-going general roof installations and repairs on CITY buildings on an as-needed basis to minimize response time and improve customer service; and

WHEREAS, CITY advertised a Request for Proposals "RFP 2022-001 " for Roof Installation and Repair Contractor Services, on a continuing, as needed basis wherein firms submitted qualifications which were reviewed, evaluated, and scored by the Selection Committee; and

WHEREAS, based on the competitive selection process CITY has determined that Springer-Peterson Roofing and Sheet Metal Inc. is qualified to provide the services and desires to award the Agreement to CONTRACTOR consistent with the terms, conditions and requirements of the above-referenced RFP.

NOW THEREFORE, in consideration of the mutual covenants, terms, and provisions contained herein, herein and for other good and value considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **TERM.** This Agreement shall be in effect for a term of three years from the date of execution with the option of two (2), one (1) year renewal periods.
3. **SCOPE OF SERVICES.** CONTRACTOR shall provide roof installation and repairs on an as needed basis in accordance with the Scope of Work, Bid Specifications and the Contractor's response to the RFP attached as Exhibit "A" and incorporated herein. CONTRACTOR acknowledges that CITY may retain other contractors, to perform similar work, and that work performed will be on an as needed basis, after receipt of a Work Order form from CITY, a sample is attached hereto as Exhibit "B." Upon receipt of a Work Order, CONTRACTOR shall provide CITY with a quote for the cost of installation and/or repair, and an estimate of the time necessary for completion of the work. CITY shall review the quote and determine whether it is in its best interest of to engage CONTRACTOR for the work. CITY shall provide CONTRACTOR authorization to proceed with the work, through approval signature of the Work Order. CONTRACTOR shall make a good faith effort to complete repairs in a timely manner. Upon knowledge of

- a delay, CONTRACTOR shall request a time extension, in writing, identifying the reason for the delay, with corresponding backup documentation and new completion date. CITY shall review the documentation and agree to time extensions for delivery delays in parts, or other reasons as the City in its sole discretion deems necessary and appropriate. Changes to the Scope of Work must be approved by CITY.

CITY may at any time require CONTRACTOR to remove any person employed in connection with the performance of the services who in the sole opinion of CITY is not suitable for the performance of the duties required. CONTRACTOR shall immediately remove the individual from performance of work under this Agreement, without hesitation or challenges to CITY

4. **REPRESENTATIONS.** CONTRACTOR hereby represents to the CITY that:

- a. They are qualified to perform these services by the State of Florida and has the experience and skill to perform the services required by this Agreement.
- b. They will provide and employ personnel qualified and experienced in their profession to perform the services required.
- c. They will comply with applicable federal, state and local laws and codes. CONTRACTOR and any personnel performing services shall secure all licenses and certifications necessary for initiation and completion of the services contained herein and shall be responsible for the payment of license and certifications fees, as applicable. If necessary, CONTRACTOR shall, upon request, provide the CITY with proof of certification compliance.
- d. CONTRACTOR will perform services in accordance with generally accepted professional standards in the most expeditious and economical manner and the extent consistent with the best interest of CITY.
- e. It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.

5. **INDEPENDENT CONTRACTOR.** The Parties hereto agree that CONTRACTOR is an independent contractor to the CITY. Nothing in this Agreement shall create or shall be deemed to create any fiduciary relationship or the relationship of principal and agent, employee and employer, partnership, joint venture, or any other similar or representative relationship between the parties hereto. CONTRACTOR and each of its employees will act as an independent contractor and not as employees of CITY.

6. **FEES.** CITY shall pay the CONTRACTOR for services and materials as set forth in the fee schedule contained in Attachment "B", the total contract amount shall not exceed the sum of T W O H U N D R E D T H O U S A N D D O L L A R S (\$ 200,000.00) per project. The fee structure may only be revised by written amendment hereto, agreed to in writing by CITY and CONTRACTOR.

7. **PAYMENT.** Invoices shall provide details of all project expenses permitted in this Agreement. Upon review and approval of CONTRACTOR's invoice and verification that services have been rendered in conformity with this Agreement, CITY, through payment issued by the Public Works Department, shall pay CONTRACTOR in accordance with the Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. CONTRACTOR shall not apply any late charges, interest or penalties to any invoice or charges for services until 30 days from CITY's receipt of the invoice. If this Agreement is

terminated for convenience for any reason, then CONTRACTOR shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred, including lost profit, to the effective date of termination.

8. **INSURANCE.** CONTRACTOR is required to submit to CITY Certificates of Insurance naming the CITY as an additional insured. Said Certificate of Insurance shall also provide that at least thirty (30) days written notice shall be given to CITY. Said Policies shall be issued and underwritten by a licensed insurer, licensed in the State of Florida. During the term of the Agreement and any renewals, CONTRACTOR at its sole cost and expenses shall maintain insurance coverage as follows:

- A. **Professional Liability Insurance:** CONTRACTOR must maintain a comprehensive liability policy, including negligent acts, errors and omissions coverage in a minimum amount of \$500,000.00 per claim, issued to the CONTRACTOR as the insured. Said policy shall be underwritten by an insurer with a rating classification of either A-, A or A+ and a financial size category rating of Class IV or higher.
- B. **Comprehensive General Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00 aggregate.
- C. **Comprehensive Automobile Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
- D. **Workers Compensation:** CONTRACTOR will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.

9. **TERMINATION FOR CAUSE.**

- A. CITY may terminate this Agreement based on any of the following reasons:
 - 1. In the event of any breach by CONTRACTOR of the conditions set forth in this Contract, including any non-performance of duties, CITY's Designated Representative may send a certified letter to CONTRACTOR requesting that CONTRACTOR show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to CITY within fifteen (15) days of the receipt by CONTRACTOR of said show cause notice, CITY may consider CONTRACTOR to be in default and may immediately terminate this Agreement.
 - 2. 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.
- B. The CONTRACTOR may terminate this Agreement for cause if CITY fails to

pay the CONTRACTOR as provided herein, or the CONTRACTOR can no longer adequately meet the scope of service in the Agreement. The CONTRACTOR shall notify the CITY of the intention to terminate with thirty (30) days notice provided by certified letter to the CITY Designated Representative. If adequate assurances are not given to the CONTRACTOR within fifteen (15) days of the receipt by the CITY of said show cause notice, then the CONTRACTOR may consider the CITY to be in default and may immediately terminate this Agreement.

10. **TERMINATION FOR CONVENIENCE.** CITY reserves the right to terminate the Agreement in whole or in part, including termination specific to location, by giving the CONTRACTOR written notice at least thirty (30) days prior to effective date of termination. Upon receipt of termination from CITY, CONTRACTOR shall only provide those services specifically approved or directed by the CITY. All other rights and duties of the parties under the Agreement shall continue during such notice period, and the CITY shall continue to be responsible to CONTRACTOR for the payment of any obligation to the extent such responsibility has not been excused by breach or default of the Contractor.

Upon termination, CONTRACTOR shall invoice CITY for all amounts not previously billed and due to CONTRACTOR at that time. CONTRACTOR shall not be entitled to any additional fees nor expenses for any work commenced or expenses incurred after the notice of termination was received by CONTRACTOR, unless specifically approved or requested by CITY. No amount shall be allowed for anticipated profit on unperformed services or other work. CONTRACTOR shall however, be entitled to payment for services commenced and approved by CITY prior to receipt of notice, or with the expressed written consent of CITY, prior to the effective date of termination.

11. **INDEMNIFICATION.** To the extent permitted by law, CONTRACTOR hereby releases and waives all claims against CITY, its officers, employees, agents, independent Contractors for any injury or damaged to the person, property, or business of CONTRACTOR agents, employees, sub-Contractors, or other persons, for which injury or damaged results from any act, neglect, occurrence, or condition in or about any CITY properties whether such damage is caused by CITY or any other person. Nothing in the agreement shall be construed as a waiver of CITY's statutory sovereign immunity pursuant to Section 768.28, Florida Statutes.

CONTRACTOR agrees to indemnify and hold harmless the CITY, its agents, officers, employees against any and all claims, demand, cost, and expenses of every kind and nature, including reasonable attorney fees for the enforcement, defense, or appeals thereof arise from CONTRACTOR performance of the Agreement or any breach or default of CONTRACTOR.

12. **NON - DISCRIMINATION.** CONTRACTOR agrees not to discriminate against any citizen, employee or employment applicant on the basis of race, color, religion, national origin, ancestry, sex, marital status or age in the performance of the obligations of this Agreement. Violation of this provision shall be treated as a breach of this Agreement.
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The CONTRACTOR shall maintain and allow access to the records 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.
15. **E-VERIFY.** In compliance with Section 448.095, Fla. Stat., CONTRACTOR and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- a. CONTRACTOR shall require each of its subcontractors to provide CONTRACTOR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. CONTRACTOR shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.
 - b. CITY, CONTRACTOR, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. CITY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but CONTRACTOR otherwise complied, shall promptly notify CONTRACTOR and CONTRACTOR shall immediately terminate the contract with the subcontractor.

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

16. **PUBLIC RECORDS.** CONTRACTOR acknowledges 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, CONTRACTOR shall keep and maintain public records required by the CITY to perform the service.

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

- d. Upon notice to CONTRACTOR of a request to inspect or copy public records relating to CITY's agreement for services, CONTRACTOR shall provide the records to CITY or allow the records to be inspected or copied within a reasonable time.
- e. If CONTRACTOR does not comply with CITY's request for records, such failure shall constitute a material breach and the Agreement shall terminate upon notice by the CITY.
- f. If the CONTRACTOR fails to provide the public records to CITY within a reasonable time may be subject to penalties under Florida Statutes §119.1

17. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.

18. **JURY TRIAL WAIVER/VENUE/WAIVER OF ATTORNEY FEES.** CONTRACTOR agrees to waive the right to a jury trial in any action, proceeding, or counterclaim. Venue shall be Osceola County, Florida. Each Party waives the right to attorney fees in any action to enforce or interpret this Agreement.

19. **WAIVER.** No failure of CITY to insist upon strict performance in any one or more terms of this Agreement, nor any failure of CITY to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the CITY may have, or future rights to enforce compliance.

20. **NOTICES.** All notices and demands shall be sent via U.S. Certified Mail, return receipt

As to CONTRACTOR:

Spring-Peterson Roofing & Sheet Metal, Inc.
Attn: Daniel Boatwright
P.O. Box 1648
Eaton Park, FL 33840

As to CITY:

CITY OF KISSIMMEE
Public Works & Engineering Dept.
Attn: Hany George
104 N. Alaska Avenue
Kissimmee, FL 34741

21. **ENTIRETY OF AGREEMENT.** This Agreement, including any attachments and exhibits referred to herein shall constitute the entire Agreement of the Parties. Any prior understanding or representations of any kind preceding the date of this Agreement shall not be binding on either party except as incorporated herein.

22. **MODIFICATIONS.** Any modifications or additional obligations assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party.

23. **BINDING.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.

24. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
23. **ATTACHMENTS.** The Attachments listed hereto are incorporated by reference and will be binding on the Parties. In the event of any inconsistency between the Attachments, the provision of this Agreement will govern and control.

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto have through their duly authorized representatives, approved and executed this Agreement as of the date set forth below:

CONTRACTOR

By: [Signature]
Title: Daniel Boatwright, Vice President

Date: 2/02/2022

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument was acknowledged before me this 2nd day of February, 2022, by means of ☒ physical presence or ☐ online notarization, by Daniel Boatwright as Vice President/GM for Springer-Peterson Roofing & Sheet Metal, Inc., a Florida corporation, who is personally known to me or has produced identification.



Notary: [Signature]
Print Name: Mary Durham
My Commission Expires: April 19, 2025

CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor-Commissioner

Date: _____

ATTEST:

Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

City Attorney



Exhibit A

ABSTRACT OF BIDS								
City of Kissimmee								
Page 1 of 2								
INVITATION/BID# RFP2022-001 Roofing Installation & Repair Contractor Services								
OPENING DATE: 11/17/2021								
TIME: 2:30PM								
REQ. DEPARTMENT: Hany George – Public Facilities Supervisor								
VENDOR NAME CITY AND STATE	Advanced Roofing Int. Ft. Lauderdale, FL	Atlas Apex Roof LLC Ft. Lauderdale, FL	Baker Roofing Com. Raleigh, N.C.	Porter Roofing Morrison, TN	RJ Group Port Orange, FL	Roof Control Srvs Inc Clermont, FL	Springer-Peterson Roofing & Sheet Metal Eaton Park, FL	RMS Orlando Inc. Orlando, FL
Category 1								
Foreman	\$75/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$65/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	20%
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%
Category 2								
Foreman	\$70/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$60/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	30%
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%

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

Exhibit A

ABSTRACT OF BIDS

City of Kissimmee

Page 2 of 2

INVITATION/BID# RFP2022-001 Roofing Installation & Repair Contractor Services

OPENING DATE: 11/17/2021
TIME: 2:30PM

REQ. DEPARTMENT: Hany George – Public Facilities Supervisor

VENDOR NAME CITY AND STATE	Advanced Roofing Int. Ft. Lauderdale, FL	Atlas Apex Roof LLC Ft. Lauderdale, FL	Baker Roofing Com. Raleigh, N.C.	Porter Roofing Morrison, TN	RJ Group Port Orange, FL	Roof Control Srvs Inc Clermont, FL	Springer-Peterson Roofing & Sheet Metal Eaton Park, FL	RMS Orlando Inc. Orlando, FL
Category 3								
Foreman	\$65/hour	\$58/hour	\$77/hour	\$85/hour	\$135/hour	\$75/hour	\$70/hour	\$94/hour
Installers	\$60/hour	\$52/hour	\$68/hour	\$70/hour	N/A	\$75/hour	\$60/hour	\$84/hour
Helper	\$55/hour	\$42/hour	\$68/hour	\$65/hour	\$115/hour	\$68/hour	\$50/hour	\$70/hour
Materials	15%	10%	15%	15%	15%	25%	15%	30%
Other Labor	15%	22%	20%	10%	N/A	25%	15%	30%

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



**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

Work Order #:

Purchase Order#:

DATE:

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to _____ with the following described work as agreed upon 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 in accordance with the Scope of Services, 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 the official Notice to Proceed from the City.

TASK	FEE
1)	
2)	
3)	
4)	
5)	
6)	
7)	
8)	
	\$ -
Contract Dollars:	\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$0.00

Accepted By: _____
(Signature)

Requested By: _____
(Signature)

Title/Position: _____

City Engineer: _____
City Engineer (Signature)

City Commission Approval Date: _____

Approved By: _____
Director, PW&E (Signature)



**CITY OF KISSIMMEE
PUBLIC WORKS & ENGINEERING
WORK ORDER FORM**

Work Order #:

Purchase Order#:

DATE:

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to _____ with the following described work as agreed upon 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 in accordance with the Scope of Services, 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 the official Notice to Proceed from the City.

TASK

FEE

1)	
2)	
3)	
4)	
5)	
	\$ -

Contract Dollars: \$0.00

NET Dollars for this Work Order/Addendum (Addition/Subtraction): \$0.00

CONTRACT TOTAL DOLLARS: \$0.00Accepted By: _____
(Signature)Requested By: _____
(Signature)

Title/Position: _____

Approved By: _____
City Manager (Signature)City Engineer: _____
City Engineer (Signature)Approved By: _____
Mayor (Signature)Approved By: _____
Director, PW&E (Signature)City Commission Approval Date: _____
(If Required)Approved as to Form and Legality: _____
City Attorney (Signature)

ITEM 7.C

Fourth Amended and Restated Interlocal Agreement Regarding Educational Impact Fees

Request

Approval and authorization for the Mayor to sign the Fourth Amended and Restated Interlocal Agreement between Osceola County, the City of Kissimmee, the City of St. Cloud and the School Board of Osceola County regarding Educational Impact Fees.

Explanation

In April, 2015, the City of Kissimmee entered into the Third Amended and Restated Interlocal Agreement with St. Cloud, Osceola County and the School Board of Osceola County regarding educational impact fees. The School District has updated the Education Impact Fee study and fee structure and Osceola County adopted Ordinance 2021-85 on December 6, 2021 establishing the new fees. These actions resulted in the amending and restating of the fourth interlocal agreement between the four jurisdictions.

Educational Impact Fees are collected when a building permit is issued for the construction of a new dwelling unit for long term rental or permanent owner occupancy. The School District uses the funds collected for capital projects, such as the construction of new schools and expansion of existing schools. The City's Building Division of the Development Services Department collects an administration fee of 3 percent of the impact fees collected to cover the cost of collecting and processing the monies.

The table below outlines the current Educational Impact Fees and the two increases that are occurring.

Residential Category	Current Fees	Fees as of March 6, 2022	Fees as of March 6, 2023
Single Family Detached	\$11,823	\$12,373	\$12,923
Townhouse	\$7,591	\$7,926	\$8,262
Multi-family	\$11,362	\$11,763	\$12,165
Condominium	\$4,243	\$4,472	\$4,702
Mobile Home	\$7,672	\$8,206	\$8,740

The interlocal agreement primarily handles the collection and processing of payment to the School District. The actual fees are set and established by Osceola County through a study and recommendation by the School Board of Osceola County.

Recommendation

Approval and authorization for the Mayor to sign the Fourth Amended and Restated Interlocal Agreement between Osceola County, the City of Kissimmee, the City of St. Cloud and the School Board of Osceola County regarding Educational Impact Fees.

City of Kissimmee

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Approved 4th Amendment Restated ILA Educational Impact Fees
2. Osceola County School Impact Fee Resolution
3. Osceola County Educational Impact Fee Ordinance

**FOURTH AMENDED AND RESTATED INTERLOCAL AGREEMENT AMONG
OSCEOLA COUNTY, FLORIDA, CITY OF ST. CLOUD, CITY OF KISSIMMEE, AND
THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA
REGARDING EDUCATIONAL SYSTEM IMPACT FEES**

This Fourth Amended and Restated Interlocal Agreement ("Agreement") is made and entered into by and among OSCEOLA COUNTY, a political subdivision of the State of Florida (the "County"); THE CITY OF ST. CLOUD, a Florida municipal corporation ("St. Cloud"), the CITY OF KISSIMMEE, a Florida municipal corporation ("Kissimmee") and THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA, a public body corporate organized and existing under the laws and constitution of the State of Florida (the "School Board").

WITNESSETH:

WHEREAS, the parties to this Agreement have determined to collectively utilize their separate powers in promoting the quality of education in Osceola County Public Schools; and

WHEREAS, a cooperative effort by interlocal agreement is necessary to outline the procedures for collection of Educational System Impact Fees (the "Impact Fees"); and

WHEREAS, the County and the Cities have entered into a prior Interlocal Agreement relating to the Impact Fees dated July 27, 1999, as amended on April 19, 2004, and as amended and restated on August 16, 2010, April 20, 2015, and December 13, 2018; and

WHEREAS, the County adopted Ordinance Numbers 2015-26, 2016-10, 2018-21 and 2021-85, the Educational System Impact Fee Ordinance, which will require growth to contribute its fair share of the cost of capital additions and improvements to the Educational System; and

WHEREAS, the County has established and adopted Impact Fees in the Educational System Impact Fee Ordinance; and

WHEREAS, the improvements and additions to the County Educational System benefit all citizens of Osceola County, both within the unincorporated area and within the boundaries of the municipalities; and

WHEREAS, the Impact Fees shall be imposed throughout Osceola County including both the unincorporated area and the areas within the boundaries of the municipalities; and

WHEREAS, the parties desire to establish a uniform procedure for collection of Impact Fees to assist the public in complying with the applicable ordinances and procedures of all parties.

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

1. This Interlocal Agreement (the "Agreement") is entered into pursuant to the provisions of the Florida Interlocal Cooperation Act contained in Section 163.01, Florida Statutes, and the County Code of Ordinances.

2. Terms in this Agreement shall have the meanings set forth in Section 24-2 and 24-37 (Definitions) of Chapter 24 of the County Code of Ordinances, unless the context clearly requires otherwise.

3. St. Cloud and Kissimmee hereby agree to assist and cooperate with the County in the collection of the Impact Fees in accordance with the effective date of County Ordinance Number 2021-85 within the boundaries of St. Cloud and Kissimmee, by requiring that the Applicant shall pay to each City the applicable Impact Fees imposed by Chapter 24 of the County Code of Ordinances prior to the issuance of a Building Permit for Residential Construction. The schedule of Impact Fees adopted is set forth in Ordinance Number 2021-85, pursuant to Section 24-39(b) of the County Code of Ordinances. Such fees may be changed from time to time in accordance with Chapter 24 of the County Code of Ordinances.

4. The County, St. Cloud and Kissimmee shall prepare, on the forms reasonably acceptable to the School Board, a summary of the Impact Fees paid for each Residential Construction. Such summary shall accompany monthly impact fee disbursements to the School Board and shall contain the following:

- A. The Building Permit number and date of the Certificate of Occupancy;
- B. The location of the property for which the Building Permit was issued;
- C. The name and address of the Applicant;
- D. The type of structure, consistent with Chapter 24 of the County Code of Ordinances, for which the Building Permit was issued; and
- E. The amount of Impact Fees and the date paid.

For purposes of implementing this Paragraph, the School Board hereby recognizes the methods that the local jurisdictions may utilize to ensure payment of Impact Fees, which include, but are not limited to, payment in cash, payment by certified check, or payment by personal check with a ten (10) business day holding period, Impact Fee Exemption Letter issued by the School Board under Section 24-42, or Impact Fee Credit Letter and/or Impact Fee Credit Voucher(s) issued by the School Board under Section 24-43.

5. For purposes of determining the amount of Impact Fees to be collected, all Impact Fees shall be deemed to have been incurred at the time of issuance of a Building Permit and shall be calculated in accordance with the effective date pursuant to Section 24-47 of the County Code of Ordinances. Refunds and exemptions will be handled in accordance with Chapter 24 of the County Code of Ordinances.

6. The County, St. Cloud, and Kissimmee shall separately maintain the Impact Fees collected in a manner that makes them distinct from all other revenues.

7. On or before the tenth (10th) day of each month, St. Cloud, Kissimmee, and the County shall transfer to the School Board the amount of Impact Fees collected during the previous month, based upon the Building Permits.

8. To reimburse the County, St. Cloud, and Kissimmee for costs of collecting the Impact Fees, each may charge an administrative fee in addition to the Impact Fee, not to exceed the actual cost of collection.

9. The County shall provide prior to written notice to St. Cloud and Kissimmee of any review by the Board of County Commissioners of the amount of the Impact Fees and shall provide St. Cloud and Kissimmee a copy of any resolution or ordinance that alters the amount of Impact Fees prior to the effective date of such rates. Further, the County and the School Board shall notify St. Cloud and Kissimmee of each review conducted pursuant to Section 24-44 of the Code of Ordinances.

10. The School Board agrees to administer the provisions of Chapter 24 of the County Code of Ordinances that authorize School Board action, including: Use of Revenues; Developer Contribution Credits; exemptions and refunds; notices to St. Cloud, Kissimmee, and County of impact fee credits, exemptions and refunds; Review Hearings; and Alternative Educational System Impact Fee determinations. In the event of any Alternative Educational System Impact Fee determination, the School Board shall notify the County, St. Cloud, and Kissimmee in writing within ten (10) days of such determination.

11. The School Board agrees to take sole responsibility for the administration and tracking of educational facility Impact Fee Credits issued under Section 24-43(k), including issuance of lot-specific Impact Fee Credit letters to the permit-issuing jurisdiction for each Building Permit where Impact Fee Credits are being used in lieu of cash payment.

12. The initial term of this Agreement shall extend from its effective date through December 31, 2025. The agreement shall be automatically renewed annually thereafter for one-year terms unless one party delivers a written notice of termination to the other parties at least sixty (60) days prior to the date of expiration of the applicable period.

13. The parties have the right to review the records of each other as to the receipt, allocation and expenditures of Impact Fees and the issuance of Building Permits. All such inspections shall be made upon reasonable prior notice and at a reasonable time and place.

14. Periodically, but no less frequently than every twelve (12) months during the term of this Agreement, the School Board shall provide a written report of the collection and expenditures of Impact Fees, including current balances maintained in the applicable revenue accounts.

15. All notices required under this Agreement shall be delivered by United States Mail or hand delivery to the following offices:

For the County: Office of County Manager
Administration Building
1 Courthouse Square
Suite 4700
Kissimmee, FL 34741

With a copy to: County Attorney's Office
Administration Building
1 Courthouse Square
Suite 4200
Kissimmee, FL 34741

For St. Cloud: City of St. Cloud
Attention: City Manager
1300 Ninth Street
St. Cloud, Florida 34769

With a copy to: Daniel F. Mantzaris, Esq.
City Attorney
DSK Law
332 N. Magnolia Avenue
Orlando, Florida 32801

For Kissimmee: City of Kissimmee
Attention: City Manager
101 N. Church Street
Kissimmee, Florida 34741

With a copy to: Olga Sanchez De Fuentes,
Esq.
City Attorney
City of Kissimmee
101 N. Church Street
Kissimmee, Florida 34741

For School Board: Office of the Superintendent
School Board of Osceola County
817 Bill Beck Boulevard
Kissimmee, Florida 34744

With a copy to: Legal Counsel to the School Board
Frank A. Kruppenbacher, Esq.
P.O. Box 3471
Orlando, Florida 32802

16. In consideration for the County's implementation of Chapter 24 of the County Code of Ordinances and St. Cloud's and Kissimmee's cooperation in collection of the Impact Fees as set forth in this Agreement, the School Board agrees that it will indemnify and hold the County, St. Cloud, and Kissimmee harmless from any loss or damage, including attorney's fees, related in any manner to this, Agreement or the County Code of Ordinances, including, but not limited to any loss or damage for any claim, either actual or threatened, arising from the passage, administration or enforcement of Chapter 24 of the County Code of Ordinances or the expenditures or collection of Impact Fees. The School Board further agrees to indemnify the County, St. Cloud, and Kissimmee for the costs of any litigation arising from Chapter 24 of the County Code of Ordinances or this Agreement, including attorney's fees, at all levels, damages, and all other losses. In the event of litigation, the School Board has the right to hire attorneys and otherwise control the litigation, at its option.

17. This Agreement shall be governed by the laws of the State of Florida. All legal actions to enforce the Agreement shall be held in Osceola County. No remedy conferred in this Agreement is intended to be exclusive of any other remedy, at law or in equity or by status or otherwise. No exercise or failure to exercise, by any party, any, right, power, or remedy hereunder shall preclude any other or further exercise thereof.

18. This Agreement sets forth the entire agreement among the parties. There are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be modified, superseded or otherwise altered, except by written agreement of the parties.

19. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances shall, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the further application of such terms or provisions, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

20. This Agreement shall become effective upon the last date of execution by the County, the School Board, St. Cloud, and Kissimmee.

21. This Agreement may be executed in four (4) original counterparts to expedite its implementation and effective date.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the County, St. Cloud, Kissimmee, and the School Board have caused this Fourth Amended and Restated Interlocal Agreement Regarding Educational System Impact Fees to be duly executed through their authorized representatives, on the respective dates set forth below.

BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA

By: [Signature]
Chair/Vice Chair

Brandon Arrington
Printed Name

12/06/2021
Date Approved

Attest: _____

By: _____

Name: [Signature]
Clerk of the Board

Printed Name: Julissa Rizzo



IN WITNESS WHEREOF, the County, St. Cloud, Kissimmee, and the School Board have caused this Fourth Amended and Restated Interlocal Agreement Regarding School Impact Fees to be duly executed through their authorized representatives, on the respective dates set forth below.

CITY COUNCIL OF THE CITY OF ST. CLOUD, FL

By: _____
Mayor/Deputy Mayor

Printed Name

Date Approved

Attest: _____

By: _____

Name: _____
City Clerk

Printed Name: _____

IN WITNESS WHEREOF, the County, St. Cloud, Kissimmee, and the School Board have caused this Fourth Amended and Restated Interlocal Agreement Regarding School Impact Fees to be duly executed through their authorized representatives, on the respective dates set forth below.

CITY COMMISSION OF THE CITY OF KISSIMMEE, FL

By: _____
Mayor/Deputy Mayor

Printed Name

Date Approved

Attest: _____

By: _____

Name: _____
City Clerk

Printed Name: _____

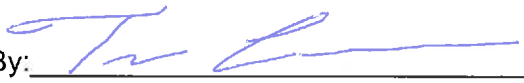
Approved as to form and legality

By: _____
City Attorney

Date: _____

IN WITNESS WHEREOF, the County, St. Cloud, Kissimmee, and the School Board have caused this Fourth Amended and Restated Interlocal Agreement Regarding School Impact Fees to be duly executed through their authorized representatives, on the respective dates set forth below.

The SCHOOL BOARD OF OSCEOLA COUNTY, FL

By: 
Chair/Vice Chair

Terry Castillo
Printed Name

1/11/22
Date Approved

Attest: 
Superintendent

Printed Name: Debra Pace, Ed. D.

Date: 1/11/22

RESOLUTION # 21-302R

**A RESOLUTION OF OSCEOLA COUNTY, FLORIDA,
RELATING TO THE IMPOSITION OF EDUCATIONAL
SYSTEM IMPACT FEES; ESTABLISHING EDUCATIONAL
SYSTEM IMPACT FEE RATES TO BE EFFECTIVE ON
MARCH 6, 2022 AND ON MARCH 06, 2023; PROVIDING
FOR NOTICE OF EDUCATIONAL SYSTEM IMPACT FEE
RATES; PROVIDING FOR SEVERABILITY AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the School Board has requested the County adopt its proposed school impact fees to ensure that future residential construction contributes its fair share of the cost of improvements and additions to the educational system necessary to accommodate such growth; and

WHEREAS, the School Board's last impact fee study was prepared by Tindale Oliver in December of 2017; and

WHEREAS, the School District has seen significant residential growth since December 2017, which growth is expected to continue in future years; and

WHEREAS, the School Board selected Tischler-Bise as its consultant to prepare an updated impact fee study; and

WHEREAS, throughout Tischler-Bise's process of gathering and reviewing data and preparing its preliminary analysis, Tischler-Bise continued to meet with both the School Board and community groups, including the Kissimmee-Osceola Chamber's Growth Management Task Force, the St. Cloud Chamber, and the Greater Orlando Home Builders Association (GOBA); and

WHEREAS, at the conclusion of the School District's process, Tischler-Bise prepared a School Impact Fee Study, dated September 8, 2021, which states that "[t]he

School District of Osceola County is updating its impact fees in order to fund capital facilities needed to meet the demand created by new residential growth in the County”; and

WHEREAS, the School Impact Fee Study anticipates that new residential development in the County will generate 6,032 additional elementary students, 3,582 middle school students, and 5,737 high school students, or a total of 15,350 additional students over the next ten years; and

WHEREAS, the School Impact Fee Study recognizes that the School District has planned capital expenditures to increase permanent capacity 5,581 additional seats over the next five years, and that additional permanent capacity will be needed in years 6-10; and

WHEREAS, on September 21, 2021, the School Board approved the School Impact Fee Study as prepared by TischlerBise, which the Superintendent of Schools subsequently forwarded to the County for approval by the Board of County Commissioners as required by Section 163.31801, Florida Statutes; and

WHEREAS pursuant to section 1013.33, Florida Statutes, the School Board and the Board of County Commissioners are required to coordinate the planning of educational facilities with the planning of residential development and the providing of other necessary services; and

WHEREAS, the increased school impact fees will ensure that future growth contributes its fair share of the cost of required capital improvements; and

WHEREAS, the Board of County Commissioners of Osceola County, Florida, has enacted Ordinance No. 2021-85 (hereinafter "Ordinance"), the Impact Fee Ordinance, which authorizes the imposition of Educational System Impact Fees in all unincorporated areas of the County and within all municipalities that consent to the imposition of the Educational System Impact Fees within their municipal boundaries; and

WHEREAS, pursuant to section 24-38 of the Ordinance, the Commission has reviewed the Impact Fee Study, including new estimates of population and other socioeconomic data, changes in construction, land acquisitions and related costs, and

other adjustments to the assumptions, conclusions and findings set forth in the Impact Fee Study; and

WHEREAS, pursuant to Section 24-36 of the Ordinance, the Commission desires to establish new Educational System Impact Fee rates based upon the most recent data relating to applicable capital costs within the County, including the cost of land and construction costs according to the annual indexing procedure established in the Ordinance; and

WHEREAS, the Educational System Impact Fee rates set forth herein are based upon current construction and equipment costs and land acquisition costs as established by recent project costs experienced by the County; and

WHEREAS, upon adoption of this Resolution, notice of the Educational System Impact Fee rates imposed herein shall be provided in accordance with Section 24-47 of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS. OF OSCEOLA COUNTY, FLORIDA:

SECTION 1. AUTHORITY. This resolution is adopted pursuant to Ordinance No. 2015-26, Article VIII, Section 1, Florida Constitution, sections 125.01 and 125.66, Florida Statutes, Section 163.3202(3), Florida Statutes, the Osceola County Home Rule Charter and other applicable provisions of law.

SECTION 2. DEFINITIONS AND INTERPRETATION. This resolution constitutes the Annual Educational System Rate Resolution for the Fiscal Year beginning on March 6, 2022, as defined in the Ordinance. All capitalized terms in this resolution shall have the meanings defined in the Ordinance.

SECTION 3. IMPOSITION OF EDUCATIONAL SYSTEM IMPACT FEE RATES.

(A) All Residential Construction occurring within the County, both within the unincorporated area and within the municipal boundaries of any municipality that has consented to the imposition of Educational System Impact Fees, that applies for a Building Permit on or after the effective date of this Resolution and the expiration of the notice period set forth in Section 24-47 of the Ordinance and Section 4 herein shall pay the

Educational System Impact Fee at the rates provided herein.

(B) For the period beginning March 6, 2022, the Educational System Impact Fee rates are hereby established as follows:

Residential Category	Unit	Calculated Impact Fees		
		Countywide	Vacation Villas	Short-Term Rentals
Single Family Detached	du	\$12,373	N/A	\$6,034
Townhouse	du	\$7,926	N/A	\$4,285
Multi-Family	du	\$11,763	N/A	\$7,283
Condominium	du	\$4,472	N/A	\$2,399
Mobile Home	du	\$8,206	N/A	N/A

(C) For the period beginning March 6, 2023, the Educational System Impact Fee rates are hereby established as follows:

Residential Category	Unit	Calculated Impact Fees		
		Countywide	Vacation Villas	Short-Term Rentals
Single Family Detached	du	\$12,923	N/A	\$6,034
Townhouse	du	\$8,262	N/A	\$4,620
Multi-Family	du	\$12,165	N/A	\$7,534
Condominium	du	\$4,702	N/A	\$2,473
Mobile Home	du	\$8,740	N/A	N/A

(D) The above Educational System Impact Fee rates are hereby approved. Educational System Impact Fees in the amounts set forth above, as herein approved, are hereby levied and imposed on all Residential Construction.

SECTION 4. NOTICE OF EDUCATIONAL SYSTEM IMPACT FEE RATES

Upon adoption of this Resolution pursuant to Section 24-47 of the Ordinance, the Impact Fee Coordinator shall publish a notice once in a newspaper of general circulation within the County in the form provided in Appendix A hereto. The date of implementation of the Educational System Impact Fee rates established herein, shall not be earlier than ninety (90) days after the date of publication of the notice.

SECTION 5. EFFECT OF ADOPTION OF RESOLUTION. The adoption of this Educational System Rate Resolution shall be the final adjudication of the issues presented (including, but not limited to, the determination of any adjustments in construction costs or land values used to calculate the Educational System Impact Fee rates and the rates

imposed for Educational System Impact Fees), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of this Annual Educational System Rate Resolution.

SECTION 6. SEVERABILITY. If any clause, section or other part of this resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way effecting the validity of the other provisions of this resolution.

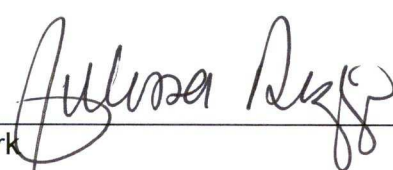
SECTION 7. EFFECTIVE DATE. This Educational System Rate Resolution shall take effect immediately upon its passage and adoption. PASSED, ADOPTED AND APPROVED THIS 6th day of December, 2021.

BOARD OF COUNTY COMMISSIONERS OF
OSCEOLA COUNTY, FLORIDA

By: 
Chair/Vice Chair

(SEAL)

ATTEST:

By: 
Clerk

Resolution #21-302R



APPENDIX A

FORM OF PUBLISHED NOTICE OF SCHOOL IMPACT FEE RATES

NOTICE OF IMPOSITION OF NEW EDUCATIONAL SYSTEM IMPACT FEE RATES

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Osceola County, Florida, on December 6, 2021, in regular session, at a properly noticed public hearing, adopted Osceola County Ordinance 2021-85, the "Osceola County Educational System Impact Fee Ordinance," (referred to herein as the "Ordinance"), authorizing the imposition of impact fees to fund capital improvements and additions to the Osceola County Educational System within the County necessitated by future growth. The Osceola County Educational System Impact Fee rates to be imposed were established pursuant to Resolution No. 21-302R and shall be imposed upon all Residential Construction occurring within the unincorporated area of Osceola County and within the municipal boundaries of any municipality that has consented to the imposition of such fees. The Educational System Impact Fee rates to be imposed commencing March 6, 2022 are as follows:

Residential Category	Unit	Calculated Impact Fees		
		Countywide	Vacation Villas	Short-Term Rentals
Single Family Detached	du	\$12,373	N/A	\$6,034
Townhouse	du	\$7,926	N/A	\$4,285
Multi-Family	du	\$11,763	N/A	\$7,283
Condominium	du	\$4,472	N/A	\$2,399
Mobile Home	du	\$8,206	N/A	N/A

The Educational System Impact Fee rates to be imposed commencing March 6, 2023 are as follows:

Residential Category	Unit	Calculated Impact Fees		
		Countywide	Vacation Villas	Short-Term Rentals
Single Family Detached	du	\$12,923	N/A	\$6,034
Townhouse	du	\$8,262	N/A	\$4,620
Multi-Family	du	\$12,165	N/A	\$7,534
Condominium	du	\$4,702	N/A	\$2,473
Mobile Home	du	\$8,740	N/A	N/A

Educational System Impact Fee rates imposed by the Osceola County Board of County Commissioners through the adoption of Ordinance 2021-85 and Resolution 21-302R shall be imposed upon all Residential Construction for which a building permit is submitted on or after March 6, 2022 and shall be collected prior to issuance of a Building

Permit for such construction.

DATED THIS 6th day of December, 2021.

ORDINANCE 2021-85

An ordinance of the Board of County Commissioners of Osceola County, Florida; Amending Chapter 24, Osceola County Code, entitled Impact Fees; Amending Article I, General Provisions; Amending Article III, Educational System Impact Fees; Providing for Severability; Providing for Conflict; Providing for Inclusion in the Code; Providing for an Effective Date; and Providing for a Grace Period.

WHEREAS, the School Board has requested the County adopt its proposed school impact fees to ensure that future residential construction contributes its fair share of the cost of improvements and additions to the educational system necessary to accommodate such growth; and

WHEREAS, the School Board's last impact fee study was prepared by Tindale Oliver in December of 2017; and

WHEREAS, the School District has seen significant residential growth since December 2017, which growth is expected to continue in future years; and

WHEREAS, the School Board selected Tischler-Bise as its consultant to prepare an updated impact fee study; and

WHEREAS, throughout Tischler-Bise's process of gathering and reviewing data and preparing its preliminary analysis, Tischler-Bise continued to meet with both the School Board and community groups, including the Kissimmee-Osceola Chamber's Growth Management Task Force, the St. Cloud Chamber, and the Greater Orlando Home Builders Association (GOBA); and

WHEREAS, at the conclusion of the School District's process, Tischler-Bise prepared a School Impact Fee Study, dated September 8, 2021, which states that "[t]he School District of Osceola County is updating its impact fees in order to fund capital facilities needed to meet the demand created by new residential growth in the County"; and

WHEREAS, the School Impact Fee Study anticipates that new residential development in the County will generate 6,032 additional elementary students, 3,582 middle school students, and 5,737 high school students, or a total of 15,350 additional students over the next ten years; and

WHEREAS, the School Impact Fee Study recognizes that the School District has planned capital expenditures to increase permanent capacity 5,581 additional seats over the next five years, and that additional permanent capacity will be needed in years 6-10; and

WHEREAS, on September 21, 2021, the School Board approved the School Impact Fee Study as prepared by TischlerBise, which the Superintendent of Schools subsequently forwarded to the County for approval by the Board of County Commissioners as required by Section 163.31801, Florida Statutes; and

WHEREAS pursuant to section 1013.33, Florida Statutes, the School Board and the Board of County Commissioners are required to coordinate the planning of educational facilities with the planning of residential development and the providing of other necessary services; and

WHEREAS, the increased school impact fees will ensure that future growth contributes its fair share of the cost of required capital improvements; and

WHEREAS, Section 125.01, Florida Statutes, grants the Osceola County Board of County Commissioners, hereinafter the “Board,” all powers necessary to carry on county government; and

WHEREAS, Section 163.3202(3), Florida Statutes, encourages the use of innovative land development regulations, including the use of impact fees to implement the goals, objectives and policies of a county's comprehensive plan; and

WHEREAS, the Osceola Board of County Commissioners adopted Ordinance No. 92-27, which established the Educational System Impact for the School Board of Osceola County; and

WHEREAS, Ordinance No. 92-27 was amended by Ordinance No. 99-13, Ordinance No. 02-07, Ordinance No. 03-06, Ordinance No. 03-42, Ordinance No. 05-14, Ordinance No. 10-11, Ordinance No. 2015-16, and Ordinance No. 2018-21; and

WHEREAS, the Ordinance provides for certain exemptions from the Educational System Impact Fee, as set forth in Section 24-42 when there is sufficient justification to warrant an exemption; and

WHEREAS, Chapter 509, Florida Statutes, allows for construction and utilization of single-family and multi-family dwelling units to be operated as vacation rentals, as defined in Sections 509.242(1)(c) and 509.013(4), Florida Statutes, subject to local laws, ordinances, and regulations as further set forth in Section 509.103(7), Florida Statutes; and

WHEREAS, the Board, the City of Kissimmee, and the City of St. Cloud allow for construction and operation of vacation rentals (hereinafter “Vacation Villas”) subject to each jurisdiction's respective codes and regulations; and

WHEREAS, the Board has determined that the impacts to the Educational System created by Vacation Villas (as defined herein) are significantly less than those created by Residential Construction; and

WHEREAS, the Board recognizes that construction of Vacation Villas contributes greatly to the local economy through increases in local employment, generation of sales tax and tourist tax revenues, increases in property values and associated ad valorem revenues, and through other associated economic impacts generated by tourists who desire to stay in Vacation Villas due to their proximity to area attractions and the amenities such communities provide; and

WHEREAS, the Board further recognizes that Vacation Villas, when in compliance with the terms and conditions imposed herein, do not create impacts to the Educational System, unlike

those that result from traditional Residential Construction; and

WHEREAS, Vacation Villas do not otherwise result in the need for increased funding for costs and improvements to the Educational System; and

WHEREAS, the Board finds that the exemption created herein for Vacation Villas is consistent with the Comprehensive Plan and furthers the interests of Osceola County residents; and

WHEREAS, Section 163.31801, Florida Statutes, imposes specific requirements on an impact fee adopted by ordinance, including use of the most recent and localized data, use of a separate accounting fund for revenues and expenditures of such impact fee, a limit on administrative charges for collection of impact fees to actual costs, and a requirement that notice be provided no fewer than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee; and

WHEREAS, the Board has determined this Ordinance is in the best interest of the citizens of Osceola County, Florida.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Osceola County, Florida, that:

***NOTE:** Language in Chapter 24 that is ~~struckthrough~~ is language proposed to be deleted; underlined language is language proposed to be added, language that is not ~~struckthrough~~ or underlined is not to be changed and * * * represents sections of the Code of Ordinances that have been skipped and remain unchanged.*

Section 1. Recitals. That the foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Amendments to Chapter 24. Chapter 24, Osceola County Code, entitled Impact Fees, is hereby amended to read as follows:

CHAPTER 24 – IMPACT FEES

* * *

ARTICLE III. EDUCATIONAL SYSTEM IMPACT FEES

* * *

Sec. 24-36. - Findings.

The board of county commissioners of Osceola County ascertains, determines and declares:

* * *

- (8) That the projected capital improvements and additions to the educational system and the allocation of projected costs between those necessary to serve existing development and those required to accommodate the educational needs of future residential construction as presented in the study entitled "school impact fee update study" dated ~~December 4,~~

2017 September 7, 2021, is hereby acknowledged by the county, and such projections are hereby found to conform with the comprehensive plan. ~~The school impact fee update study contains three (3) different fee schedule options, and after due and thorough consideration of existing county administrative and land use policies, option 1, as set out in the school impact fee update study, has been selected as the most appropriate and equitable fee schedule.~~

- (9) An interlocal agreement regarding education impact fees was entered into between the county, the school board, St. Cloud and Kissimmee and is dated July 31, 1999, as amended on April 19, 2004, ~~and on August 16, 2010, and on April 20, 2015,~~ and on December 13, 2018. It is anticipated that an amended and restated interlocal agreement will be entered into between the county, the school board and the cities to permit the imposition of an educational system impact fee within all areas of the county. Such interlocal agreement will also govern the collection, administration, and use of the impact fee.

* * *

- (12) That the county acknowledges that there currently exist deficiencies in the educational system capital improvements which will be addressed by the school board with revenues other than ~~then~~ educational system impact fees.

* * *

Sec. 24-37. - Definitions applicable to educational system impact fee.

The following words, terms and phrases, when used in this chapter 24, article III, educational system impact fees, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

~~Affordable-workplace~~ essential services personnel housing shall mean a dwelling unit which is offered for sale or rent to income eligible persons who are employed in occupations and professions in which they are considered essential services personnel, as consistent with F.S. § 420.9075, and any applicable local housing assistance plan, and which monthly rent or monthly mortgage payments, including taxes, insurance and utilities, do not exceed thirty (30) percent of that amount which represents the percentage of the median adjusted gross income for low-income persons and very-low-income persons.

~~Annual educational system rate resolution~~ shall mean the resolution described in section 24-39 and 24-47 hereof, establishing educational system impact fee rates.

* * *

Sec. 24-38. - Acceptance of impact fee study.

The board hereby acknowledges and incorporate by reference herein that study entitled "school impact fee update study," dated ~~December 4, 2017~~ September 7, 2021, including the

assumptions, conclusions and findings in such study as to the determination of anticipated costs of the additions to the county educational system required to accommodate growth.

Sec. 24-39. - Imposition of educational system impact fee.

- (a) All residential construction occurring within the county, both within the unincorporated area and within the cities, shall pay the educational system impact fee established in accordance with this Code prior to the issuance of a building permit.
- (b) The educational system impact fee rates for Osceola County shall be those established in the school impact fee update study dated ~~December 4, 2017~~ September 7, 2021, as shown below. Future adjustments shall be made in accordance with sections ~~24-46 and 24-47~~.

Residential Category	Unit	Calculated Impact Fees		
		Countywide	Vacation Villas	Short-Term Rentals
Single Family Detached	du	<u>\$12,923.00</u>	N/A	<u>\$6,034</u>
		11,823.00		6,264.00
Townhouse	du	<u>\$8,262.00</u>	N/A	<u>\$4,620</u>
		7,591.00		3,951.00
Multi-Family	du	<u>\$12,165.00</u>	N/A	<u>\$7,534</u>
		11,362.00		7,033.00
Condominium	du	<u>\$4,702.00</u>	N/A	<u>\$2,473</u>
		4,243.00		2,325.00
Mobile Home	du	<u>\$8,740.00</u>	N/A	<u>N/A</u>
		7,672.00		7,672.00

(c) An increase to a current impact fee rate of not more than twenty-five (25) percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.

(d) An increase to a current impact fee rate which exceeds twenty-five (25) percent but is not more than fifty (50) percent of the current rate must be implemented in four equal installments beginning with the date the increased fee is adopted.

(e) An impact fee increase may not exceed fifty (50) percent of the current impact fee rate.

(f) An impact fee may not be increased more than once every four (4) years.

(g) An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

(h) By establishing the need for such an increase, the school district may increase the impact fee rate beyond the phase-in limitations established under paragraph (b), paragraph (c), paragraph (d), or paragraph (e) provided the following criteria are met:

(1) A demonstrated need study justifying any increase in excess of those authorized in paragraph (b), paragraph (c), paragraph (d), or paragraph (e) has been completed within the twelve (12) months before the adoption of the impact fee increase and expressly demonstrates the extraordinary circumstances necessitating the need to exceed the phase-in limitations.

(2) The School Board has held not less than two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations set forth in paragraph (b), paragraph (c), paragraph (d), or paragraph (e).

(3) The impact fee increase ordinance is approved by at least two-thirds vote of the School Board.

* * *

Sec. 24-41. - Alternative educational system impact fee calculation.

* * *

(d) The proposed alternative educational system impact fee and support documentation shall be submitted to the superintendent who shall review the calculation and provide a preliminary written determination to the applicant within sixty (60) calendar days of submittal as to whether such calculation complies with the requirements of this section. All fees associated with the review shall be paid by the applicant submitting the alternative educational system impact fee.

* * *

Sec. 24-42. - Educational system impact fees exemptions.

The following development shall be exempted from payment of the educational system impact fee.

(1) Subject to the availability of other school board revenues to pay for this exemption, any residential construction that qualifies as ~~affordable-workforce~~ essential services personnel housing and meets the following requirements:

a. Any person seeking an ~~affordable-workforce~~ essential services personnel housing exemption shall file with the superintendent an application for exemption prior to the

issuance of a building permit for the proposed residential construction. The application for exemption shall contain the following:

1. The name and address of the owner;
 2. The legal description of the residential construction;
 3. The number of bedrooms within the residential construction;
 4. The proposed selling price or the proposed rental price, as applicable;
 5. Evidence that the residential construction shall be occupied by income-eligible persons;
 6. Evidence that the residential construction shall be occupied by persons employed in occupations and professions in which they are considered essential services personnel, as consistent with F.S. § 420.9075, and any applicable local housing assistance plan; ~~and~~
 7. Evidence that the residential construction is part of a multi-family project, which is funded by a government affordable housing program, if applicable; and
 8. The Filing Fee adopted is set forth in Resolution #21-302R. Such fees may be changed from time to time but shall not exceed the actual cost of the review fees to process the application.
- b. For residential construction to receive an affordable-~~workforce~~ essential services personnel housing exemption, it must meet all the restrictions of affordable-~~workforce~~ essential services personnel housing as provided herein and these restrictions must continue for a period of at least thirty (30) years from the date of issuance of a certificate of occupancy. Such restrictions must either be contained within the deed for the residential construction; the terms, restrictions and conditions of a direct government grant or subsidy that will fund the residential construction; or within the terms of a development agreement between the county and the owner.
 - c. If the residential construction meets the requirements for an affordable-~~workforce~~ essential services personnel housing exemption, the superintendent shall issue an exemption. The exemption shall be presented in lieu of payment of the educational system impact fees.
 - d. The amount of the educational system impact fees shall not be increased to replace any revenue lost due to the affordable-~~workforce~~ essential services personnel housing exemption.
 - e. No exemption of this type shall be granted for a residential construction which consists of a mobile home.
 - f. In the event the residential construction fails to meet the restrictions of affordable-~~workforce~~ essential services personnel housing as provided herein within the 30-year period following the issuance of the certificate of occupancy such that the property no longer qualifies as affordable-~~workforce~~ essential services personnel housing and is no longer occupied by income-eligible persons, the educational system impact fees in effect at the time of the change in circumstances shall be immediately due.

(2) Any residential construction that qualifies as housing for older persons and meets the following requirements:

a. Any person seeking a housing for older persons exemption shall file with the superintendent an application for exemption prior to receiving a building permit for the proposed residential construction. The application for exemption shall contain the following:

1. The name and address of the owner;
2. The legal description of the residential construction;
3. Evidence that the residential construction is within a community or subdivision that is operated as housing for older persons in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Acts of 1968, as amended by the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995, 42 U.S.C. §§ 3601-19, or its statutory successor in function;
4. A copy of the recorded declaration of covenants and restrictions that run with the land, cannot be revoked or amended for a period of at least thirty (30) years from recording, and that prohibit any person under the age of eighteen (18) years of age from residing within any dwelling unit on the property as a permanent resident; and

5. The Filing Fee adopted is set forth in Resolution #21-302R. Such fees may be changed from time to time but shall not exceed the actual cost of the review fees to process the application.

b. If the residential construction meets the requirements for a housing for older persons exemption, the superintendent shall issue an exemption. The exemption shall be presented in lieu of payment of the educational system impact fee.

c. The amount of the educational system impact fee shall not be increased to replace any revenue lost due to the housing for older persons exemption.

d. In the event the recorded declaration of covenants and restrictions is breached or otherwise modified within the 30-year period following recording such that persons under the age of eighteen (18) are allowed to reside as permanent residents in any residential construction receiving a housing for older persons exemption, the educational system impact fee in effect at the time of the change in circumstances shall be due.

e. Upon written notification by the school board that a student under the age of eighteen (18) has been registered to attend school and is residing at a Housing for Older Persons community, the property owner's association shall have sixty (60) calendar days from the date of the written notification in which to demonstrate to the school board that the subject student registration was in error or, alternatively, that the subject student no longer resides in the Housing for Older Persons. Otherwise, payment of the educational system impact fee shall be made by the property owner's association within ninety (90) calendar days from the date of the written notification.

(3) Subject to the availability of other school board revenues to pay for this exemption, any residential construction that qualifies as vacation villas and meets the following requirements:

a. Any person seeking a vacation villas exemption ("VV exemption") shall file with the superintendent an application for exemption prior to receiving a building permit for the proposed residential construction. The application for exemption shall contain the following:

1. Name and address of the owner(s);
2. Legal description of the vacation villas property;
3. Evidence of compliance with applicable zoning and land use regulations;
4. Evidence that the vacation villas are not designed or intended for permanent occupancy, including but not limited to:
 - A. The lack of availability of mail delivery services;
 - B. Regulations that preclude guests from occupying a specific unit for more than thirty (30) days within twelve (12) months of the stay;
 - C. Requirements for rental rate calculations to be made on a daily or weekly basis;
 - D. Sales and marketing materials that expressly provide that the permanent occupancy of a vacation villas is prohibited;
 - E. A letter of commitment filed with the developer's application certifying the residential construction identified within the developer application will qualify as vacation villas and meet the exemption requirements of the educational impact fee ordinance;
 - F. ~~A filing fee of two thousand dollars (\$2,000.00).~~ The Filing Fee adopted is set forth in Resolution #21-302R. Such fees may be changed from time to time but shall not exceed the actual cost of the review fees to process the application;
 - G. A recorded plat denoting the lot(s) to be identified as vacation villas;
 - H. A single business tax receipt for each residential dwelling unit proposed for exemption. This requirement will need to be maintained each year of the exemption;
 - I. A deed restriction that notifies the owners or prospective owners that because students are not to reside in the property, the school board has no plans for transportation from the property;
 - J. A deed restriction requiring the owners or prospective owners to sign an owner acknowledgement specifically providing that the lots are not eligible for homestead exemption for thirty (30) years; and
 - K. A deed restriction providing that the articles of the deed restrictions relating to the school district may not be amended without the signed

consent of the superintendent for the school district of Osceola County, Florida.

5. A copy of the proposed declaration of covenants and restrictions (the "declaration") that runs with the land and contains the following provisions, which cannot be revoked or amended without permission from the school board for a period of at least thirty (30) years from recording:
 - A. Restrictions that require all of the vacation villas governed by the declaration to be used exclusively for transient occupancy, with any use or occupancy being limited to no more than thirty (30) days or one (1) calendar month at a time within a twelve-month period, whichever is less, and
 - B. Restrictions that authorize and require the property owner's association to pay to the school board an amount equal to the applicable educational system impact fee for a dwelling unit, in the event that a student under the age of ~~nineteen (19)~~ eighteen (18) has been registered to attend school, and such registration indicates the student's residency is at a vacation villas.
- b. Upon written notification by the school board that a student under the age of ~~nineteen (19)~~ eighteen (18) has been registered to attend school and is residing at a vacation villa, the property owner's association shall have sixty (60) calendar days from the date of the written notification in which to demonstrate to the school board that the subject student registration was in error or, alternatively, that the subject student no longer resides in the vacation villas. Otherwise, payment of the educational system impact fee shall be made by the property owner's association within ninety (90) calendar days from the date of the written notification.

* * *

Sec. 24-44. - Review requirement.

This article and the educational system impact fee study shall be reviewed by the county and school board at least every ~~three~~ four years. The initial and each review thereafter shall consider new estimates of population and other socioeconomic data, changes in construction, land acquisition and related costs, and adjustments to the assumptions, conclusions or findings set forth in the study adopted by section 24-39. The purpose of this review is to evaluate and revise, if necessary, the educational system impact fee to ensure that the fee does not exceed the reasonably anticipated costs associated with the improvements and additions necessary to offset the demand generated by growth. In the event the review required by this section alters or changes the assumptions, conclusions and findings of the study adopted by reference in section 24-39, the study shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and section 24-39 shall be amended to adopt by reference such updated studies.

* * *

Sec. 24-46. ~~Periodic impact fee rate adjustment.~~

- (a) ~~Annually, if requested by the school board, the board shall adopt an annual educational system rate resolution at least 90 days prior to October 1 of each year, commencing in 2016, unless a full review of this article and the educational system impact fee study is completed pursuant to section 24-44 herein before October 1 of each year.~~
- (b) ~~The annual educational system rate resolution shall set forth adjusted educational system impact fee rates for the educational system impact fee land use categories reflecting changes in the cost of impact fee components for the upcoming year as set forth below:~~
 - (1) ~~Educational system impact fee components pertaining to construction and equipment costs shall be adjusted by the average percentage change from the previous two (2) fiscal years in the Consumer Price Index.~~
 - (2) ~~Educational system impact fee components relating to land acquisition costs shall be adjusted by the percentage change for the previous fiscal year in the market value of land for real property owned by the school board as determined by written qualified opinions of estimated value of a representative sample of school board owned property. Such qualified opinions of estimated value shall be issued by an M.A.I appraiser using generally accepted appraisal techniques.~~
 - (3) ~~Provided, however, that in the event the board, after consultation and input from the Superintendent, determines that the requested rate adjustment of the educational system impact fee will cause residential construction to pay more than its fair share of the costs of improvements and additions to the educational system that are necessary to accommodate the students generated by such growth, said rate adjustment will be decreased accordingly.~~
- (c) ~~The adjusted rates set forth in the annual educational system rate resolution shall take effect on October 1 of the year in which the annual educational system rate resolution is adopted subject to the notice provisions set forth in section 24-47 herein.~~

Sec. 24-47. - Notice of educational system impact fee rates.

Upon adoption of the initial resolution establishing the educational system impact fee rates pursuant to section 24-39, a periodic rate adjustment resolution pursuant to 24-46, or any other amendment to the educational system impact fee rates, the impact fee coordinator shall publish a notice once in a newspaper of general circulation within the county which notice shall include: (i) a brief and general description of the educational system impact fee, (ii) a description of the geographic area in which the educational system impact fee will be collected, (iii) the educational system impact fee rate to be imposed for each category of the educational system impact fee, and (iv) the date of implementation of the educational system impact fee rates set forth in the notice, which date shall not be earlier than ninety (90) days after the date of publication of the notice, be at least ninety (90) days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

Sec. 24-48. - Short term rental.

Any residential construction that qualifies as short term rental and meets the following requirements will be entitled to pay the reduced rate for a short term rental dwelling unit as calculated in the latest school impact fee update study:

- (a) Any person seeking the reduced short term rental rate shall file with the superintendent an application for short term rental prior to receiving a building permit for the proposed residential construction. The application for short term rental shall contain the following:
 - (1) Name and address of the owner(s);
 - (2) Legal description of the short term rental property;
 - (3) Evidence that the short term rental is to be or is being marketed for short-term stays. It is recommended that the services of a property management company are being offered by the owner;
 - (4) Evidence that the design of the development discourages permanent residency by the lack of availability of mail delivery, no county residential universal garbage pick-up, increased resort-style amenities, increased parking considerations, and noise buffering;
 - (5) A copy of the proposed declaration of covenants and restrictions that runs with the land and contains the following provisions, which cannot be revoked or amended for a period of thirty (30) years from recording without permission from the school board:

Restrictions stating that mailboxes or mail delivery shall not be available; garbage collection shall be provided by a commercial hauler and not part of the Osceola County residential garbage collection; a property or homeowner's association that oversees the increased amenities facilities; and language that sets out that the development is intended for non-permanent occupancy;

- (6) A letter of commitment filed with the developer's application certifying the residential construction identified within the developer's application will qualify as short term rental and meet the reduced rate requirements of the educational impact fee ordinance;
 - (7) ~~A filing fee of two thousand dollars (\$2,000.00).~~ The Filing Fee adopted is set forth in Resolution #21-302R. Such fees may be changed from time to time but shall not exceed the actual cost of the review fees to process the application.
 - (8) A recorded plat denoting the lot(s) to be identified as capable of being used for short term rental;
 - (9) A deed restriction that notifies the owners or prospective owners that the property is not eligible for homestead exemption if used as a short term rental; and
 - (10) A deed restriction providing that the articles of the deed restrictions relating to the school district may not be amended without the signed consent of the superintendent for the school district of Osceola County, Florida.
- (b) Upon written notification by the school board that a student under the age of eighteen (18) has been registered to attend school and is residing at a Short-Term Rental community, the property owner's association shall have sixty (60) calendar days from the date of the written notification in which to demonstrate to the school board that the subject student registration was in error or, alternatively, that the subject student no longer resides in the Short-Term Rental community, payment of the educational system impact fee shall be made by the property owner's association within ninety (90) calendar days from the date of the written notification.

If the requirements above are met, the superintendent shall issue a letter to the applicant and the jurisdiction that this development shall be charged the short term rental rate for each dwelling unit.

* * *

Section 3. Declaration of Exclusion from Administrative Procedures Act.

Nothing contained in this Ordinance shall be construed or interpreted to include the County in the definition of agency contained in Section 120.52, Florida Statutes, or to otherwise subject the County to the application of the Administrative Procedures Act, Chapter 120, Florida Statutes. This declaration of intent and exclusion shall apply to all proceedings taken, as a result of or pursuant to this Ordinance, including specifically, but not limited to, a Developer Contribution Credit under Section 24-43 upon review hearing under Section 24-8, or any review of the imposition and amount of any impact fee imposed hereunder. It is declared that the School Board is the beneficiary of the funds generated from this Ordinance, but all issues involving the manner, means, and methods of collection of the Impact Fee and the amount thereof in any particular case shall be deemed to be action by the Board and not by the School Board. The School Board, whenever it is designated to sit in a decision making capacity under this Ordinance, including but not limited to decisions concerning the exemption from, or the amount of, an impact fee in a particular case, or the award and amount of credit in a particular case, shall be deemed to be acting in accordance with this County Ordinance, and therefore the review of any decision by the School Board in its capacity acting under this ordinance shall be excluded from the Administrative

Procedures Act and the review shall be limited to Petition for Writ of Certiorari in the Osceola County Circuit Court.

Section 4. Severability. It is declared to be the intent of the Board of County Commissioners that if any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 5. Conflict. Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

Section 6. Inclusion in the Code. The provisions of this Ordinance shall be included and incorporated within the Code of Ordinances of Osceola County, Florida, and may be renumbered or relettered to accommodate such inclusion.

Section 7. Effective Date. This Ordinance shall be filed with the Department of State pursuant to law and become effective March 6, 2022.

Section 8. Grace Period. The impact fee imposed by this Ordinance shall be due and payable for all residential construction subject to this Ordinance which is constructed pursuant to any building permit issued on or after the effective date of this Ordinance.

PASSED AND ADOPTED by the Board of County Commissioners of Osceola County, at its duly noticed meeting this December 6th, 2021.

BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA
(seal)

By: _____
Chair/Vice Chair

Clerk of the Board

Ordinance 2021-85



Letter to Florida Department of State

Notice of Public Hearing

NOTICE OF PUBLIC HEARING

Notice is hereby given that Public Hearings will be held by the **Board of County Commissioners** beginning at **1:30 P.M.**, or as soon thereafter as practical, on **December 6, 2021**, in the Osceola County Administration Building, Commission Chambers, 4th Floor, 1 Courthouse Square, Kissimmee, Florida, 34741 to consider the following:

ORDINANCE # 2021-85: An ordinance of the Board of County Commissioners of Osceola County, Florida; Amending Chapter 24, Osceola County Code, entitled Impact Fees; Amending Article I, General Provisions; Amending Article III, Educational System Impact Fees; Providing for Severability; Providing for Conflict; Providing for Inclusion in the Code; Providing for an Effective Date; and Providing for a Grace Period.

Materials relating to the above may be examined in the offices of the Osceola County Community Development, 1 Courthouse Square, Suite 1100, Kissimmee, Florida 34741, between 8:00 a.m. and 5:00 p.m., weekdays except holidays. Written comments may be submitted to the Community Development Department at the above address.

For questions regarding these requests please contact the Osceola County Community Development Department at 407-742-0200; fax number at 407-742-0206 or email at notice@osceola.org. Interested parties may appear at the public hearing and be heard with respect to these items.

Any person wishing to provide documents for review at a public hearing must submit them to notice@osceola.org prior to the meeting or bring copies of the documents to distribute to the Planning Commission/Board of County Commissioners. No outside removable devices will be accepted at the hearing.

Individuals with disabilities requiring accommodations (i.e., sign language interpreter or materials in accessible format) in order to participate in meetings, please contact the County's ADA Coordinator, (407) 742-1200 (TTY Users Dial: 711 for the Florida Relay System) or Hind.Huda@osceola.org, at least five (5) business days prior to the meeting.

111821.006



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

December 9, 2021

Ms. Julissa Rizzo, Deputy Clerk
Osceola County
2 Courthouse Square
Kissimmee, Florida 34741

Dear Ms. Rizzo:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Osceola County Ordinance No. 2021-85, which was filed in this office on December 9, 2021.

Sincerely,

Anya Owens
Program Administrator

AO/lb

ITEM 7.D**Purchase Portable Radios from Motorola Solutions, Inc.****Request**

Approval to purchase portable radios for the Police Department from Motorola Solutions, Inc. for a total cost of \$63,094.59.

Explanation

The Kissimmee Police Department is requesting approval to purchase thirteen (13) Motorola portable radios and accessories from Motorola Solution, Inc. Four (4) of these portable radios will be purchased for the four new positions approved in the FY2021-22 budget while the remaining nine (9) will replace aging portable radios. The Motorola Solutions, Inc. quotes are based on the NASPO Cooperative Purchasing Master Agreement #00318 NVP-MA with Motorola. The total cost of this purchase is \$63,094.59.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00130206 506494	PD2204	Decrease	\$19,414.00	\$19,413.72
00130206 506494	PD2207	Decrease	\$43,681.00	\$43,680.87

Financial Summary:

Adequate funding exists in these projects to cover the cost associated with the purchase of these radios.

Recommendation

Staff recommends Commission approval to purchase portable radios for the Police Department from Motorola Solutions, Inc. for the total cost of \$63,094.59.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter:

Attachment(s):

1. Motorola Solutions Quote qty 4 \$19413.72
2. Motorola Solutions Quote qty 9 \$43680.87

City of Kissimmee

3. Motorola NASPO contract



Bob Busch
Motorola, Inc.
3382 Bartlett Blvd
Orlando, FL 32746

(615) 477-8245 - Cell
bbusch@emciwireless.com
FEID - 361115800

11-Jan-22	City of Kissimmee - Pamela Lynch	New Quote
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ITEM	MODEL #	DESCRIPTION	DISCOUNTED PRICE	QTY	EXTENDED PRICE
APX6000 Portable Radio					
1	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	\$2,624.35	4	\$10,497.40
1a	H38	ENH: SMARTZONE OPERATION	\$963.60	4	\$3,854.40
1b	G361	ENH: P25 TRUNKING SOFTWARE	\$240.90	4	\$963.60
1c	G806	ENH: ASTRO DIGITAL CAI OP APX	\$413.91	4	\$1,655.64
1d	G996	ENH: OVER THE AIR PROVISIONING	\$80.30	4	\$321.20
1e	H122	ALT: 1/4- WAVE 7/800 GPS STUBBY	\$18.98	4	\$75.92
1f	Q58	ADD: 3Y ESSENTIAL SERVICE	\$115.00	4	\$460.00
1g	QA05570	ALT: LI-ION IMPRES 2 IP68 3400 MAH	\$80.30	4	\$321.20
1h	QA01222	ADD: BELT CLIP	\$9.49	4	\$37.96
2	T7914A	RADIO MANAGEMENT ONLINE	\$80.30	4	\$321.20
3	NNTN8860	SINGLE UNIT CHARGER	\$120.45	4	\$481.80
4	PMMN4099	REMOTE SPEAKER MIC, 3.5MM, IP68	\$105.85	4	\$423.40
Total					\$19,413.72

Note: 1. Above pricing is from State of Florida Contract No. - 43190000-18-NASPO-ACS-1
2. Above pricing assumes programming completed and installation completed by Customer

PLEASE ENSURE ALL PURCHASE ORDERS REFLECT THE FOLLOWING INFORMATION:

PAYMENT TERMS: NET 30
VENDOR NAME: MOTOROLA SOLUTIONS, INC.
YOUR BILL TO AND SHIP TO ADDRESS
YOUR PREFERRED EMAIL ADDRESS FOR ELECTRONIC INVOICING



Bob Busch
Motorola, Inc.
3382 Bartlett Blvd
Orlando, FL 32746

(615) 477-8245 - Cell
bbusch@emciwireless.com
FEID - 361115800

18-Jan-22

City of Kissimmee - Pamela Lynch

New Quote

ITEM	MODEL #	DESCRIPTION	DISCOUNTED PRICE	QTY	EXTENDED PRICE
APX6000 Portable Radio					
1	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	\$2,624.35	9	\$23,619.15
1a	H38	ENH: SMARTZONE OPERATION	\$963.60	9	\$8,672.40
1b	G361	ENH: P25 TRUNKING SOFTWARE	\$240.90	9	\$2,168.10
1c	G806	ENH: ASTRO DIGITAL CAI OP APX	\$413.91	9	\$3,725.19
1d	G996	ENH: OVER THE AIR PROVISIONING	\$80.30	9	\$722.70
1e	H122	ALT: 1/4- WAVE 7/800 GPS STUBBY	\$18.98	9	\$170.82
1f	Q58	ADD: 3Y ESSENTIAL SERVICE	\$115.00	9	\$1,035.00
1g	QA05570	ALT: LI-ION IMPRES 2 IP68 3400 MAH	\$80.30	9	\$722.70
1h	QA01222	ADD: BELT CLIP	\$9.49	9	\$85.41
2	T7914A	RADIO MANAGEMENT ONLINE	\$80.30	9	\$722.70
3	NNTN8860	SINGLE UNIT CHARGER	\$120.45	9	\$1,084.05
4	PMMN4099	REMOTE SPEAKER MIC, 3.5MM, IP68	\$105.85	9	\$952.65
Total					\$43,680.87

Note: 1. Above pricing is from State of Florida Contract No. - 43190000-18-NASPO-ACS-1
2. Above pricing assumes programming completed and installation completed by Customer

PLEASE ENSURE ALL PURCHASE ORDERS REFLECT THE FOLLOWING INFORMATION:

PAYMENT TERMS: NET 30
VENDOR NAME: MOTOROLA SOLUTIONS, INC.
YOUR BILL TO AND SHIP TO ADDRESS
YOUR PREFERRED EMAIL ADDRESS FOR ELECTRONIC INVOICING

COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00318

PUBLIC SAFETY COMMUNICATIONS PRODUCTS, SERVICES AND SOLUTIONS

For Use by Eligible Purchasing Entities

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

MOTOROLA SOLUTIONS, INC.

Dated January 1, 2022

COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00318

PUBLIC SAFETY COMMUNICATIONS PRODUCTS, SERVICES AND SOLUTIONS

FOR

SUB-CATEGORY 1.1 RADIO SINGLE-BAND PORTABLE RADIO (P25)

SUB-CATEGORY 1.2 RADIO SINGLE-BAND MOBILE RADIO (P25)

SUB-CATEGORY 1.3 RADIO: SINGLE-BAND DESKTOP RADIO (P25)

SUB-CATEGORY 1.4 RADIO MULTI-BAND PORTABLE RADIO (P25)

SUB-CATEGORY 1.5 RADIO MULTI-BAND MOBILE RADIO (P25)

SUB-CATEGORY 1.6 RADIO MULTI-BAND DESKTOP RADIO (P25)

SUB-CATEGORY 1.7 RADIO BASE STATION/REPEATER (P25)

SUB-CATEGORY 2.1 RADIO CONVENTIONAL ANALOG PORTABLE (NON-P25)

SUB-CATEGORY 2.2 RADIO CONVENTIONAL ANALOG MOBILE (NON-P25)

SUB-CATEGORY 2.3 RADIO CONVENTIONAL ANALOG DESKTOP (NON-P25)

SUB-CATEGORY 2.4 RADIO CONVENTIONAL ANALOG BASE STATION/REPEATER (NON-P25)

CATEGORY 4 DISPATCH CONSOLES

COMPLETE TURNKEY RADIO SOLUTION

This Cooperative Purchasing Master Agreement ("Cooperative Purchasing Master Agreement") is made and entered into by and between Enterprise Services acting by and through the State of Washington ("Enterprise Services") and Motorola Solutions, Inc., an Delaware corporation ("Contractor") and is dated and effective as of January 1, 2022.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish Cooperative Purchasing Master Agreements for goods and services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature has authorized Enterprise Services to make these Cooperative Purchasing Master Agreements available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agency or entity, public benefit nonprofit organizations, or any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements for the procurement of goods or services. See RCW 39.26.060(1). One of the approaches that Enterprise Services utilizes to participate in cooperative purchasing agreements with other states is NASPO ValuePoint.
- C. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO). The NASPO ValuePoint purchasing cooperative program is led by state procurement officers from member states. NASPO ValuePoint does not award contracts; rather, it assists states, for an administrative fee, in their collaboration pertaining to solicitations and the resulting master agreements.

- D. Pursuant to the NASPO ValuePoint cooperative purchasing model, a state serves as the 'lead state' to conduct a competitive procurement in compliance with that state's procurement laws and award a cooperative purchasing master agreement with a contractor for the specified goods or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in that cooperative purchasing master agreement by executing a Participating Addendum. Until a Participating Addendum is executed by the applicable state (a 'participating entity'), no agency or other eligible organization (a 'purchasing entity') may purchase pursuant to the cooperative purchasing master agreement. Under Washington law, at the time of solicitation, states may provide supplemental substantive terms and conditions to inform the competitive procurement. In addition, pursuant to their Participating Addendum, states may require certain administrative terms and conditions (e.g., a vendor management fee for sales within the state, state registration and reporting). Contractor, however, has no obligation to condition execution of a Participating Addendum on substantive terms and conditions that were not competitively procured.
- E. Enterprise Services, as part of a cooperative purchasing competitive governmental procurement, with administrative support from NASPO ValuePoint, issued Competitive Solicitation No. 00318 dated November 16, 2020 regarding Public Safety Communications Products, Services and Solutions ("Public Safety Radio"). Sixteen (16) states indicated an intent to utilize the resulting Cooperative Purchasing Master Agreement.
- F. Enterprise Services and a stakeholder team consisting of representatives from Washington, California, Alaska, Oregon, Montana, Tennessee, Colorado and Nevada evaluated all responsive bids to the Competitive Solicitation and identified Contractor as an Apparent Successful Bidder for the Category identified above.
- G. Enterprise Services determined that entering into this Cooperative Purchasing Master Agreement will meet the cooperative purchasing needs and be in the best interest of the State of Washington.
- H. The purpose of this Cooperative Purchasing Master Agreement is to enable Participating or Purchasing Entities to purchase Public Safety Radio products and services, in the awarded Category as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

- 1. TERM.** The term of this Master Agreement begins January 1, 2022 and ends on December 31, 2026; provided, however that, the contract term shall be extended for twenty-four (24) months if, in Enterprise Services' sole, reasonable judgement, which shall occur no later than June 30, 2025, Contractor meets the following performance metrics:

- Reports: Contractor provides timely and accurate reports as detailed in this Master Agreement and Participating Addendums; and
- Administrative Fee Payments: Contractor provides timely and accurate Administrative Fee payments as detailed in this Master Agreement and Participating Addendums.

Notwithstanding any provision to the contrary, to effectuate a smooth transition for Participating States and Purchasing Entities for Public Safety Communications Products, Services and Solutions to begin on January 1, 2022, Contractor shall provide implementation and transition support to Participating States who wish to utilize the Master Agreement, beginning upon the date such Participating State and Contractor executes a Participating Addendum. For the avoidance of doubt, no orders for products or services shall be made under this Agreement prior to January 1, 2022.

2. PARTICIPANTS AND SCOPE. This Cooperative Purchasing Master Agreement may be utilized under the following conditions:

- 2.1. **PARTICIPATING ENTITIES.** Contractor may not sell Public Safety Radio products and services under this Cooperative Purchasing Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The terms and conditions set forth in the Cooperative Purchasing Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented, or amended by a Participating Addendum; *Provided*, however, that no Participating Addendum shall operate to alter or modify any substantive terms of this Cooperative Purchasing Master Agreement which were solicited and procured pursuant to a competitive procurement. By way of illustration and not limitation, Participating Entities may include unique administrative, delivery, and invoicing requirements, as well as entity-specific confidentiality requirements and similar entity-specific administrative requirements in purchase Orders utilizing this Cooperative Purchasing Master Agreement.
- 2.2. **PURCHASING ENTITIES.** Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order or other commitment document against the Cooperative Purchasing Master Agreement and becomes financially committed to the purchase.
- 2.3. **PARTICIPATING ADDENDUM.** Obligations under this Cooperative Purchasing Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive or other process to determine which Cooperative Purchasing Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum as instructed by the Lead State to support documentation of participation and posting in appropriate databases.
- 2.4. **PURCHASING ENTITY RIGHTS.** Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Cooperative Purchasing Master Agreement and applicable Participating Addendum and will have the same rights

and responsibilities for their purchases as the Lead State has in the Cooperative Purchasing Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Cooperative Purchasing Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. Contractor will apply the charges and invoice each Participating Entity individually.

- 2.5. PARTICIPATING ADDENDUM APPROVAL. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Cooperative Purchasing Master Agreement, Contractor is authorized to sell only those Public Safety Radio Products and Services in the category above posted on the NASPO ValuePoint website. Contractor shall not represent to any Participating or Purchasing Entity under this Cooperative Purchasing Master Agreement that Contractor has contractual authority to sell any Public Safety Radio Products beyond those approved and posted on the NASPO ValuePoint website.
- 3.2. MINIMUM WARRANTY FOR INCLUDED GOODS/SERVICES. Notwithstanding any provision to the contrary, Contractor agrees to and is providing a minimum warranty of no less than one (1) year for any goods/services included in this Cooperative Purchasing Master Agreement. Such minimum warranty begins when the goods/services are accepted by Purchasing Entity or as agreed by Purchasing Entity in its ordering documentation. Such minimum warranty includes all firmware and software updates within warranty period. Parts and related software will be free from defects in material and workmanship for one (1) year. If a product fails because of a defect in workmanship or materials within one (1) year from the date of acceptance by Purchasing Entity, manufacture shall repair or replace the product or part with a new product or part without charge to Purchasing Entity.
- 3.3. ADDITIONAL WARRANTY OPTIONS – See Motorola Solutions Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all available warranty options.
- 3.4. AVAILABLE SERVICES – See Motorola Solutions Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all available services.
- 3.5. ABILITY TO MODIFY SCOPE OF COOPERATIVE PURCHASING MASTER AGREEMENT. Subject to mutual agreement between the parties, Enterprise Services, acting as the lead state, reserves the right to modify the Public Safety Radio Products included in this Cooperative Purchasing Master Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this competitively procured Cooperative Purchasing Master Agreement. In no event shall such modification, if authorized by Enterprise Services, limit the requirement for cooperative purchasing agreements to be subject to competitive procurement.

- 3.6. **PRODUCT UPDATES.** Upon approval, Contractor may update their products/pricelist on a semi-annual basis. Contractor must submit to the Lead Contract Administrator a revised product/pricelist highlighting changes and include an effective date of the change. At no time during the contract term shall products be deleted from the products/pricelist. Discontinued products/services must be struck-through and highlighted for ease of review process. Product/pricelist updates must be submitted for review and approval to the Lead Contract Administrator thirty (30) days prior to the effective date of the change. All products/pricelist will be posted on the NASPO ValuePoint website.

Product updates for January 1st through June 30th must be submitted to Lead State Contract Administrator by June 1st to be eligible for product updates effective July 1st. Product updates for July 1st through December 31st must be submitted to the Lead State Contract Administrator by December 1st to be eligible for product updates effective January 1st. Additional product updates may be considered for approval with proper 30 day notice at the discretion of the Lead State.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 st	July 1 st
July 1-December 31	December 1 st	January 1 st

System Solution providers may update their list of available products quarterly. Quarterly means the last day of each calendar quarter, see below.

Quarter	Submitted By	Effective Date
January 1-March 30	March 1 st	April 1 st
April 1-June 30	June 1 st	July 1 st
July 1- September 30	September 1 st	October 1 st
October 1-December 31	December 1 st	January 1 st

All System Solution available product options will be posted on the NASPO ValuePoint website. A minimum of thirty-three percent (33%) of the components offered in a complete Radio or Microwave System Solution must be indexed on the Awarded Contractor's Price List. Enterprise Services reserves the right to audit System Solution orders for compliance. Updates to System Solution available products must be submitted to the Lead Contract Administrator 30 days prior to the effective date of the change. Additional product options may be considered for approval with proper 30 day notice at the discretion of the Lead State.

- 3.7. **ECONOMIC ADJUSTMENTS.** All pricing must be guaranteed for the first year of the Cooperative Purchasing Master Agreement. Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating the reasonableness of the adjustment when comparing the current price

list to the proposed price list. Documentation may include: the manufacturer's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published manufacturer's price list. No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published manufacturer's price list, including renewal options, the Lead State shall be notified immediately. All published manufacturer's price list price reductions shall be effective upon the notification provided to the Lead State.

Enterprise Services reserves the right to request clarification and justification for requested Economic Adjustments.

Economic Price Adjustment requests for January 1st through June 30th must be submitted to Lead State Contract Administrator by June 1st to be eligible for product updates effective July 1st. Product updates for July 1st through December 31st must be submitted to the Lead State Contract Administrator by December 1st to be eligible for product updates effective January 1st.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 st	July 1 st
July 1-December 31	December 1 st	January 1 st

- 3.8. **PRICE CEILING.** Although Contractor may offer lower prices, including volume discounts, to Purchasing Entity, during the term of this Cooperative Purchasing Master Agreement, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth approved and posted on the NASPO ValuePoint website.
- 3.9. **COOPERATIVE PURCHASING MASTER AGREEMENT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Cooperative Purchasing Master Agreement, including scope and pricing, to eligible Purchasing Entity.
- 3.10. **CONTRACTOR RESPONSIBILITIES.** Contractor shall be responsible for successful performance of the Cooperative Purchasing Master Agreement and also for the successful performance of any and all of their partners. Contractor is to be the sole point of contact as applicable by Cooperative Purchasing Master Agreement with regard to contractual matters, payment of any and all charges resulting from the purchase of the products and maintenance of the product for the term of the Cooperative Purchasing Master Agreement unless otherwise specified by a Participating State in a Participating Addendum and/or the Cooperative Purchasing Master Agreement. Contractor must be able to receive, process, and invoice orders unless the Participating State has agreed to assign these functions to a partner. Contractor will be responsible for compliance with requirements under the Cooperative Purchasing Master Agreement, even if requirements are delegated to partners. Contractor and partners must not in any way represent themselves in the name of the Lead State, NASPO ValuePoint or Participating States.

- 4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Cooperative Purchasing Master Agreement and at the time any order is placed pursuant to this Cooperative Purchasing Master Agreement. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
- 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor further represents and warrants that, within fifteen (15) days of executing any Participating Addendum and prior to making any sales pursuant to such Participating Addendum, Contractor shall be in good standing and qualified to do business in such state and that Contractor properly shall have registered to do business in such state, shall possess and shall keep current all required licenses and/or approvals, and that it shall be current, in full compliance, and have paid all applicable taxes owed to such state.
- 4.2. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3. **QUALITY OF GOODS OR SERVICES.** Contractor represents and warrants that any goods and/or services sold pursuant to this Cooperative Purchasing Master Agreement shall be merchantable, shall conform to this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order, shall be fit and safe for the intended purposes as specified in this Agreement, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered and the services provided free of liens and encumbrances. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchasing Entity) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Purchasing Entity's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs. These warranties do not apply to: (i) defects or damage resulting from: use of the equipment or software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Contractor; Purchasing Entity's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship equipment to the repair depot; (vi) scratches or other

cosmetic damage to equipment surfaces that does not affect the operation of the equipment; and (vii) normal or customary wear and tear.

THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND CONTRACTOR SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

- 4.4. WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Cooperative Purchasing Master Agreement and the three (3) year period immediately preceding the award of the Cooperative Purchasing Master Agreement, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.5. PAY EQUALITY. Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement and any Purchasing Entity hereunder similarly may suspend or terminate its use of the Cooperative Purchasing Master Agreement and/or any agreement entered into pursuant to this Cooperative Purchasing Master Agreement.
- 4.6. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Cooperative Purchasing Master Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.7. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited

to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasing Entity's employees.

- 4.8. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Cooperative Purchasing Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 4.9. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.10. COOPERATIVE PURCHASING MASTER AGREEMENT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Cooperative Purchasing Master Agreement with eligible Purchasing Entity and to ensure that those entities that utilize this Cooperative Purchasing Master Agreement are eligible Purchasing Entity. Contractor understands and acknowledges that neither Enterprise Services nor Purchasing Entity are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchasing Entity, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.11. COOPERATIVE PURCHASING MASTER AGREEMENT TRANSITION. Contractor represents and warrants that, in the event this Cooperative Purchasing Master Agreement or a similar contract, is transitioned to another contractor (e.g., Cooperative Purchasing Master Agreement expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.
- 4.12. SUB-CONTRACTORS, AUTHORIZED RESELLERS/DEALERS. MANUFACTURER'S REPRESENTATIVE (PARTNERS). If utilizing partners, Contractor is responsible for such partners providing products and services, as well as warranty and maintenance services for any product or solution such partners provide pursuant to this Cooperative Purchasing Master Agreement. Pursuant to their applicable Participating Addendum, each Participating Entity may allow or disallow Contractor to utilize Partners. Only partners approved by the Participating Entity may be utilized. The Participating Entity will define the process to add and remove partners in their Participating Addendum.

5. USING THE COOPERATIVE PURCHASING MASTER AGREEMENT – PURCHASES.

- 5.1. ORDERING REQUIREMENTS. Eligible Purchasing Entity shall order goods and/or services from this Cooperative Purchasing Master Agreement, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchasing Entity but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchasing Entity also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchasing Entity Order"). All order documents must reference the Cooperative Purchasing Master Agreement number. The terms of this Cooperative Purchasing Master Agreement shall apply to any Purchase Order and, in the

event of any conflict, the terms of this Cooperative Purchasing Master Agreement shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Cooperative Purchasing Master Agreement.

A minimum of thirty-three percent (33%) of the solution components must be indexed on the Contractor's Price List. Prior to executing an order for a "Solution", Contractor shall provide Purchasing Entity a detailed Cost Proposal itemizing all proposed costs (including labor costs, employee benefits, travel, overhead and other direct costs) Contractor estimates it will incur in the performance of the work.

- (a) All order documents must, at a minimum, reference
 - the Cooperative Purchasing Master Agreement number;
 - The place and requested time of delivery;
 - A billing address;
 - The name, phone number, and address of the Participating Entity representative;
- (b) All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Participating Entity's purchasing office, or to such other individual identified in writing in the Order.
- (c) Orders must be placed pursuant to this Cooperative Purchasing Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days thereafter.
- (d) Notwithstanding the expiration, cancellation or termination of this Cooperative Purchasing Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Cooperative Purchasing Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Cooperative Purchasing Master Agreement may not be placed after the expiration or termination of this Cooperative Purchasing Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

5.2. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Cooperative Purchasing Master Agreement, the Purchase Order used by Purchasing Entity, or as otherwise mutually agreed in writing between the Purchasing Entity and Contractor. The following apply to all deliveries:

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchasing Entity's normal work hours and within the time period mutually agreed in writing between Purchasing Entity and Contractor at the time of order placement. Deliveries to be off-loaded at Purchasing Entity's receiving dock or designated job site by Contractor.

- (b) Contractor shall ship all goods purchased pursuant to this Master Agreement Purchasing Entity's specified destination. Shipping charges must be mutually agreed to between Purchasing Entity and Contractor. Contractor shall bear all risk of loss, damage, or destruction of the goods ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchasing Entity's fault or negligence.
- (c) All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.
- (d) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Cooperative Purchasing Master Agreement shall be identified by the Cooperative Purchasing Master Agreement number set forth on the cover of this Cooperative Purchasing Master Agreement and the applicable Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- (e) Purchasing Entities may return unopened or unused (non-specialty) Public Safety Radio products within ten (10) business days of receipt for full credit, minus any freight or restocking fee. In such event, Contractor is responsible for shipping costs pertaining to any defective Public Safety Radio Products that are returned.

5.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Cooperative Purchasing Master Agreement are subject to Purchasing Entity's reasonable inspection, testing, and approval at Purchasing Entity's destination. Such inspection and approval shall be determined within thirty (30) days of delivery. Purchasing Entity reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order. Purchasing Entity may charge Contractor for the cost of inspecting rejected goods. If there are any apparent defects in the goods and/or services at the time of delivery, Purchasing Entity will notify Contractor within five (5) business days. At Purchasing Entity's option, and without limiting any other rights, Purchasing Entity may require Contractor to, consistent with the warranty terms, repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Purchasing Entity's option, Purchasing Entity may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.

- (a) All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Cooperative Purchasing Master Agreement. Products that do not meet

specifications may be rejected. Failure to reject upon receipt, however, does not relieve Contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when the Public Safety Radio Products are put to use. Acceptance of such Public Safety Radio Products may be revoked in accordance with the provisions of the applicable commercial code, and Contractor shall be liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of any Public Safety Radio Products rejected and returned, or for which Acceptance is revoked.

- (b) If any Public Safety Radio Products do not conform to the specifications, the Purchasing Entity may require the Contractor to repair or replace the Public Safety Radio Product in conformity with the specifications.

- 5.4. ON SITE REQUIREMENTS. While on Purchasing Entity's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchasing Entity's physical, fire, access, safety, and other security requirements.
- 5.5. INSTALLATION. Installation shall be performed by Contractor or Sub-Contractor, in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. Purchasing Entity reserves the right to require Contractor or Sub-Contractor to repair any damage caused during installation or provide full compensation as determined by Purchasing Entity.
- 5.6. CONFIDENTIALITY; SAFEGUARDING OF INFORMATION. Contractor shall not use or disclose any information concerning Enterprise Services/the State of Washington or Purchasing Entity's information which may be classified as confidential, for any purpose not directly connected with the administration of this Cooperative Purchasing Master Agreement, except with prior written consent of Enterprise Services (or the applicable Purchasing Entity), or as may be required by law.
- 5.7. TREATMENT OF ASSETS. Title to all property furnished by any Participating State and/or Purchasing Entity shall remain with such Participating State and/or Purchasing Entity, as applicable. Any property of any Participating State and/or Purchasing Entity furnished to Contractor shall, unless otherwise provided herein or approved by such Participating State and/or Purchasing Entity, be used only for the performance of this Cooperative Purchasing Master Agreement. Contractor shall be responsible for damages as a result of any loss or damage to property of any Participating State and/or Purchasing Entity to the extent it results from the negligence of Contractor or to the extent it results from the failure on the part of Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances. If any such Participating State and/or Purchasing Entity property is lost, destroyed, or damaged, Contractor immediately shall notify such Participating State and/or Purchasing Entity and shall take all reasonable steps to protect the property from further damage. Contractor shall surrender to such Participating State and/or Purchasing Entity all property of such Participating State and/or Purchasing Entity prior to settlement upon completion, termination, or cancellation of this Cooperative Purchasing Master Agreement. Title to all property furnished by Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Purchasing Entity upon delivery of such property by Contractor and acceptance by the Purchasing Entity. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in the

Purchasing Entity upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchasing Entity in whole or in part, whichever first occurs. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors. Title to software shall not pass to Purchasing Entity but shall be licensed. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors.

- 5.8. **SOFTWARE LICENSE AGREEMENT.** If the public safety communications equipment ordered and delivered under the terms and conditions of this Cooperative Purchasing Master Agreement requires software or firmware to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Software License Agreement that will apply to such transactions. Contractor's current version of the Software License Agreement is located on the NASPO ValuePoint website. Contractor's software license agreement shall not conflict with the terms and conditions of this Cooperative Purchasing Master Agreement. If there are any conflicts between the Cooperative Purchasing Master Agreement and Contractor's Software License Agreement, the Cooperative Purchasing Master Agreement shall prevail.
- 5.9. **SUBSCRIPTION SERVICES AGREEMENT.** If the public safety communications equipment ordered and delivered under the terms and conditions of this Contract requires subscription services to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Subscription Services Agreement that will apply to such transactions. Contractor's current version of the Subscription Services Agreement is located on the NASPO ValuePoint website. Contractor's Subscription Services Agreement shall not conflict with the terms and conditions of this Master Agreement. If there are any conflicts between the Cooperative Purchasing Master Agreement and Contractor's Subscription Services Agreement, the Cooperative Purchasing Master Agreement shall prevail.

6. INVOICING & PAYMENT.

- 6.1. **CONTRACTOR INVOICE.** Contractor shall submit to Purchasing Entity's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
- Cooperative Purchasing Master Agreement No. 00318
 - Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
 - Contractor's Federal Tax Identification Number
 - Date(s) of delivery
 - Applicable goods/services
 - Invoice amount; and
 - Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Cooperative Purchasing Master Agreement prices, less discounts or lower negotiated costs. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 6.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due within thirty (30) days of invoice. If Purchasing Entity fails to make timely payment(s), Contractor may invoice Purchasing Entity in the amount of one percent (1%) per

month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

- 6.3. OVERPAYMENTS. Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchasing Entity may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.4. NO ADVANCE PAYMENT. No advance payment shall be made for the products and services furnished by Contractor pursuant to this Cooperative Purchasing Master Agreement; *Provided*, however, that the parties agree that maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.
- 6.5. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.6. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Cooperative Purchasing Master Agreement. Failure to do so shall constitute breach of this Cooperative Purchasing Master Agreement. Unless otherwise agreed, Purchasing Entity shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchasing Entity, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

7. CONTRACT MANAGEMENT.

- 7.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Cooperative Purchasing Master Agreement. Enterprise Services' contract administrator shall provide Cooperative Purchasing Master Agreement oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Cooperative Purchasing Master Agreement. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Contract Administrator 00318
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-2218

Motorola Solutions, Inc.

Attn: Andrew Chyterbok
500 W Monroe Street
Suite 4400
Chicago, IL 6661-3781

Email: DESContractsTeamCypress@des.wa.gov

Tel: (360) 409-3223

Email: andrew.chyterbok@motorolasolutions.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchasing Entity issues pertaining to this Cooperative Purchasing Master Agreement.
- 7.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Legal Services Manager
Washington Dept. of Enterprise
Services
PO Box 41411
Olympia, WA 98504-1411
Email: greg.tolbert@des.wa.gov

Motorola Solutions, Inc.

Attn: Andrew Chyterbok
500 W Monroe Street
Suite 4400
Chicago, IL 6661-3781
Email:
andrew.chyterbok@motorolasolutions.com

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

8. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS.

- 8.1. SUMMARY SALES DATA. Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Cooperative Purchasing Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 8.2. DETAILED SALES DATA. Contractor also shall report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Participating Entity name; (4) Participating Entity bill-to and ship-to locations; (4) Participating Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; and (8) line item description, including product number if used. Reports are due on a quarterly basis and must be received by the Enterprise Services and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to Enterprise Services and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by Enterprise Services and NASPO ValuePoint. Detailed sales data reports shall

include sales information for all sales under Participating Addenda executed under this Cooperative Purchasing Master Agreement.

- 8.3. **NASPO VALUEPOINT EXECUTIVE SUMMARY.** Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- 8.4. **REPORT OWNERSHIP.** Timely submission of these reports is a material requirement of the Cooperative Purchasing Master Agreement. Enterprise Services and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.
- 8.5. **CONFIDENTIALITY OF DETAILED SALES DATA AND PARTICIPATING ADDENDA.** Participating Addenda, as well as Orders or transaction data relating to Orders under this Cooperative Purchasing Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates, shall be Confidential Information. Contractor shall hold Confidential Information in confidence and shall not transfer or otherwise disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Cooperative Purchasing Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Cooperative Purchasing Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

9. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW

- 9.1. **NASPO VALUEPOINT COOPERATIVE PROGRAM.** Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Cooperative Purchasing Master Agreement, including the competitive nature of NASPO ValuePoint procurements, the Cooperative Purchasing Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Cooperative Purchasing Master Agreement.
- 9.2. **LOGOS.** NASPO VALUEPOINT logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 9.3. **ANNUAL SUPPLIER BUSINESS REVIEW.** Contractor agrees to participate in an annual supplier performance review at a location (virtual or in-person) selected by Enterprise Services and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees. The 2022 Annual Supplier Business Review requires in-person

attendance. Any subsequent Annual Supplier Business Review meetings may be attended virtually or in-person.

10. ADMINISTRATIVE FEES.

- 10.1. CONTRACTOR shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint ADMINISTRATIVE Fee of one-quarter of one percent (0.25%) of the quarterly sales by participating state. The NASPO ValuePoint administrative fee is not negotiable. This fee may not be adjusted in any Participating Addendum. This fee is to be included as part of the pricing submitted with the bid.
- 10.2. Some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. The fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Cooperative Purchasing Master Agreement. The Contractor may adjust the Cooperative Purchasing Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee set forth above shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

11. RECORDS RETENTION & AUDITS.

- 11.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Cooperative Purchasing Master Agreement and orders placed by Purchasing Entity under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.2. AUDIT. Upon reasonable advance written notice, Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Purchasing Entity and that Contractor has paid all applicable vendor management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchasing Entity, and any other duly authorized agent of a governmental agency, to audit, inspect examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Cooperative Purchasing Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 11.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchasing Entity, Contractor shall reimburse Purchasing Entity for any overpayments inconsistent with the terms of this Cooperative Purchasing Master Agreement or orders, at a rate of 100% of such overpayments, found as a result of the examination of the Contractor's records.

12. INSURANCE.

- 12.1. REQUIRED INSURANCE. During the Term of this Cooperative Purchasing Master Agreement, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit A – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.
- 12.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Cooperative Purchasing Master Agreement. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.
- 12.3. INSURANCE CERTIFICATE. Prior to commencement of performance, Contractor shall provide to Enterprise Services a Certificate of Insurance acceptable to Enterprise Services that (1) includes the State of Washington and Enterprise Services as additional insureds, (2) provides for written notice of cancellation delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

- 13. PUBLIC INFORMATION.** This Cooperative Purchasing Master Agreement, all related documents, and all records created as a result of the Cooperative Purchasing Master Agreement are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. In addition, Participating Addendums and related records shall be subject to public disclosure as required by applicable law pertaining to such Purchasing Entity. Consistent with the Public Records Act, to the extent that any such Contractor document or record – in whole or in part – includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record – the exempted or protected portions only – with the specific basis for protection under the Public Records Act. In the event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining such disclosure. In the event Contractor fails to file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor's failure properly to identify exempted or protected information or timely

respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are protected or exempt from disclosure.

14. DEFAULTS AND REMEDIES

14.1. **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Cooperative Purchasing Master Agreement immediately by written cure notice of any default. Contractor may be required to submit a written cure plan within five (5) business days of Suspension notification. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Cooperative Purchasing Master Agreement. All of Contractor's obligations to Enterprise Services and Purchasing Entity survive termination of Contractor's rights under this Cooperative Purchasing Master Agreement, until such obligations have been fulfilled.

14.2. **DEFAULT.** Each of the following events shall constitute default of this Cooperative Purchasing Master Agreement by Contractor:

- (a) Contractor fails to perform or comply with any of the terms or conditions of this Cooperative Purchasing Master Agreement;
- (b) Contractor breaches any representation or warranty provided herein; or
- (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

14.3. **REMEDIES for DEFAULT.**

- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Cooperative Purchasing Master Agreement are in addition to all other available remedies.
- (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasing Entity replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Cooperative Purchasing Master Agreement price and the replacement or cover price for identical equipment or services, as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement. Enterprise Services or Purchasing Entity will mitigate damages and provide Contractor with detailed invoices substantiating the charges.
- (c) Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Cooperative Purchasing Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, either Party shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order. Nothing in this Cooperative Purchasing Master Agreement shall be

construed to limit the rights and remedies available to either Party under the applicable commercial code.

- 14.4. **LIMITATION ON DAMAGES.** Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchasing Entity be liable to the other for exemplary or punitive damages. Contractor's total liability, whether for breach of contract, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the \$2,000,000 per claim or \$30,000,000 aggregate liability; *provided*, however, that nothing contained in this Section will in any way exclude or limit Contractor's liability for all damages arising out of gross negligence, personal injury or death.

ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS AGREEMENT.

This limitation of liability provision survives the expiration or termination of this Cooperative Purchasing Master Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Cooperative Purchasing Master Agreement may be brought later than the limitations period specified by statute.

- 14.5. **GOVERNMENTAL TERMINATION.**

- (a) **Termination for Withdrawal of Authority.** Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Cooperative Purchasing Master Agreement; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor. Contractor will be entitled to seek a change order to the extent Contractor provides documentary evidence that Contractor has incurred additional costs as a result of the suspension including costs to demobilize and remobilize the project.
- (b) **Termination for Convenience.** Enterprise Services, for convenience, may terminate this Cooperative Purchasing Master Agreement; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services

already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

15. CLAIMS.

- 15.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents to the extent caused by its operations under this Cooperative Purchasing Master Agreement. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchasing Entity's property resulting directly or indirectly from its acts or omissions under this Cooperative Purchasing Master Agreement, to the extent attributable to negligence by Contractor or its agents.
- 15.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services, any Purchasing Entity, and NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint) (NASPO) and their respective employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") to the extent arising from any negligent act or omission of Contractor or its successors, agents, and subcontractors under this Cooperative Purchasing Master Agreement, except to the extent such claims are caused by Enterprise Services, any Purchasing Entity, or NASPO's negligence. Contractor shall take all steps needed to keep Purchasing Entity's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Cooperative Purchasing Master Agreement or in any other document executed in conjunction with this Cooperative Purchasing Master Agreement.
- 15.3. INDEMNIFICATION – Intellectual Property. The Contractor will defend at its expense any suit brought against NASPO, NASPO ValuePoint, Participating State or Purchasing Entity, ("Customer") to the extent it is based on a third party claim alleging Contractor manufactured equipment or Contractor software ("Contractor Product") directly infringes a United States patent or copyright ("Intellectual Property Claim") if Contractor receives reasonably prompt written notice of such claim or suit. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense.

If an Intellectual Property Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for Customer the right to continue using the Contractor Product; (b) replace or modify the Contractor Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Contractor Product and grant Customer a credit for the Contractor Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

- (1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
 - (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - (b) modified by a third party other than Contractor
 - (c) specified by the Contractor to work with the Product; or
 - (d) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - (e) it would be reasonably expected to use the Product in combination with such product, system or method.

This Section 15 provides Customer's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. Customer has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 15 are subject to and limited by the restrictions set forth in Section 14.4.

16. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Cooperative Purchasing Master Agreement efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

17. GENERAL PROVISIONS.

- 17.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Cooperative Purchasing Master Agreement.
- 17.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law.
- 17.3. **INTEGRATED AGREEMENT.** This Cooperative Purchasing Master Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.4. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Cooperative Purchasing Master Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.5. **AUTHORITY.** Each party to this Cooperative Purchasing Master Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that

it has full power and authority to enter into this Cooperative Purchasing Master Agreement and that its execution, delivery, and performance of this Cooperative Purchasing Master Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

- 17.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Cooperative Purchasing Master Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 17.7. ASSIGNMENT. Contractor may not assign its rights under this Cooperative Purchasing Master Agreement without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Cooperative Purchasing Master Agreement in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Cooperative Purchasing Master Agreement notwithstanding any prior assignment of its rights.
- 17.8. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Cooperative Purchasing Master Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.9. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Cooperative Purchasing Master Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 17.10. FEDERAL FUNDS. To the extent that any Purchasing Entity uses federal funds to purchase goods and/or services pursuant to this Cooperative Purchasing Master Agreement, such Purchasing Entity shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery. Contractor shall have reasonable opportunity to review, and if required, clarify such requirement or certification prior to accepting any such order.
- 17.11. SEVERABILITY. If any provision of this Cooperative Purchasing Master Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Cooperative Purchasing Master Agreement, and to this end the provisions of this Cooperative Purchasing Master Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Cooperative Purchasing Master Agreement.
- 17.12. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its

obligations under this Cooperative Purchasing Master Agreement, nor shall any purported oral modification or rescission of this Cooperative Purchasing Master Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

- 17.13. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Cooperative Purchasing Master Agreement shall survive and remain in effect following the expiration or termination of this Cooperative Purchasing Master Agreement, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.14. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Cooperative Purchasing Master Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules. The validity, construction, and effect of any Participating Addendum pertaining to the Cooperative Purchasing Master Agreement or Order placed pursuant to such Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 17.15. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Cooperative Purchasing Master Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington; *Provided*, however, that venue for any claim, dispute, or action concerning any Order placed against the Cooperative Purchasing Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- 17.16. **SOVEREIGN IMMUNITY.** In no event shall this Cooperative Purchasing Master Agreement, any Participating Addendum or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court.
- 17.17. **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Cooperative Purchasing Master Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 17.18. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Cooperative Purchasing Master Agreement shall be construed as a whole according to their common meaning and not

strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Cooperative Purchasing Master Agreement. Each party hereto and its counsel has reviewed and revised this Cooperative Purchasing Master Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Cooperative Purchasing Master Agreement. Each term and provision of this Cooperative Purchasing Master Agreement to be performed by either party shall be construed to be both a covenant and a condition.

- 17.19. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Cooperative Purchasing Master Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Cooperative Purchasing Master Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Cooperative Purchasing Master Agreement.
- 17.20. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Cooperative Purchasing Master Agreement in their entirety.
- 17.21. CAPTIONS & HEADINGS. The captions and headings in this Cooperative Purchasing Master Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Cooperative Purchasing Master Agreement nor the meaning of any provisions hereof.
- 17.22. ELECTRONIC SIGNATURES. An electronic signature of this Cooperative Purchasing Master Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Cooperative Purchasing Master Agreement or such other ancillary agreement for all purposes.
- 17.23. COUNTERPARTS. This Cooperative Purchasing Master Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Cooperative Purchasing Master Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Cooperative Purchasing Master Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: Elena McGrew
Elena McGrew
Its: Acting Statewide Enterprise Procurement
Manager

MOTOROLA SOLUTIONS, INC.
A DELAWARE CORPORATION

By: Neil Thomas
Neil Thomas
Its: Regional Vice President and Director of
Sales

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Cooperative Purchasing Master Agreement, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.

The insurance coverage limits set forth herein are required. Contractor's insurance coverage shall be the amounts specified. Coverage in the amounts of these limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.
2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability and, Commercial Automobile Liability, Insurance shall include the State of Washington and all authorized Purchasing Entity (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Cooperative Purchasing Master Agreement, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Cooperative Purchasing Master Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and amounts, have been secured. In addition, no less than five (5) days prior to coverage expiration, Contractor shall furnish to

Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All certificates of insurance shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.** All certificates of Insurance and any related insurance documents shall be delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

US Mail: Contracts & Procurement – Cooperative Purchasing Master
Agreement Insurance Certificate
Cooperative Purchasing Master Agreement
No. 00318 – Public Safety Communications Products, Services and Solutions
Attn: Team Cypress
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411

Email: DESContractsTeamCypress@des.wa.gov

Note: For Email notice, the Email Subject line must state:
Cooperative Purchasing Master Agreement Insurance Certificate –
No. 00318 – Public Safety Communications Products, Services and Solutions

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchasing Entity. All insurance or self-insurance of the State of Washington and/or Purchasing Entity shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Prior to utilizing any subcontractor, Contractor shall require any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchasing Entity for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation without at least thirty (30) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Cooperative Purchasing Master Agreement.

00318 NVP-MA Motorola Clean-20211221_MSI_signed

Final Audit Report

2022-01-04

Created:	2022-01-04
By:	Neva Peckham (neva.peckham@des.wa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAATm9nOYpuw4mH_AHN_ril9XZfWe7EIZrX

"00318 NVP-MA Motorola Clean-20211221_MSI_signed" History

-  Document created by Neva Peckham (neva.peckham@des.wa.gov)
2022-01-04 - 3:00:02 PM GMT- IP address: 198.238.242.30
-  Document emailed to Elena McGrew (elena.mcgrew@des.wa.gov) for signature
2022-01-04 - 3:01:00 PM GMT
-  Email viewed by Elena McGrew (elena.mcgrew@des.wa.gov)
2022-01-04 - 4:25:28 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Elena McGrew (elena.mcgrew@des.wa.gov)
Signature Date: 2022-01-04 - 10:19:39 PM GMT - Time Source: server- IP address: 198.238.242.30
-  Agreement completed.
2022-01-04 - 10:19:39 PM GMT

ITEM 7.E

Acceptance of the 2021-2022 EMS County Awards Grant

Request

Approval of the acceptance of an EMS County Awards grant, the utilization of the funds as outlined below, and the establishment of grant accounts for these purchases.

Explanation

The Fire Department was awarded \$9,019 as part of the Department of Health, EMS County Awards Grant Program. The grant funds are to be utilized to enhance Emergency Medical Services within the City of Kissimmee.

This year the Fire Department would like to use the grant funds to purchase new CPR Training Manikins. The American Heart Association requires that training is done with manikins that provide instant feedback. The newer Laerdal QCPR manikins connect to a tablet, allowing the instructors to see how the student is performing live and help with proper technique. The Laerdal Pneumothorax Trainer manikin is also used for needle decompression training. Paramedics perform needle decompression to relieve pressure in the chest cavity.

Additionally, we are requesting approval to purchase three (3) new Automatic Electronic Defibrillators (AED). One unit will replace the last older unit in our system, and two will be for use in staff vehicles. We will also be purchasing various pads and batteries for the AEDs.

The grant funds would be utilized as follows:

Laerdal QCPR Adult & Baby Manikins (5 each)	\$ 2,324.35
Laerdal Pneumothorax Trainer Manikin	\$ 1,235.07
AED - Cardiac Science Auto G5 CPR Feedback, with case, ready pack, pads (3)	\$ 4,590.45
AED Replacement Pads - Adult (5)	\$ 314.15
AED Replacement Battery (2)	\$ <u>572.72</u>
Grand Total:	\$9,036.74
Balance to be made up by currently budget funds	\$17.74

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00100337-337103		Increase	\$9,019	
00135203-505255		Increase	\$9,019	

Financial Summary:

The balance of monies needed for these acquisitions will be funded from monies already included in the Fire Department's budget.

Recommendation

Staff recommends approval for the acceptance of these funds, the utilization of funds for the purchase of the above referenced equipment and training, establishment of grant accounts for these purchases and to amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Fire
Presenter:

Attachment(s):

None

ITEM 7.F

Kissimmee Police Department's Wrecker Service Qualifications and Tow Rotation List Guidelines & the Tow Rotation Application and Inspection Form

Request

The Kissimmee Police Department requests Commission approval of Kissimmee Police Department General Order 434 and the Tow Rotation Application and Inspection Form (Form #156)

Explanation

City Code Section 46-19 grants the Chief of Police the power to make such regulations as may be necessary to carry out the provision of City Code Chapter 46, Vehicles for Hire, Article II, Wrecker Services, provided that the regulations are approved by majority vote of the commission before they can be used.

The Chief of Police has determined that additional regulations are necessary to manage the wrecker service rotating list created by City Code Section 46-23 in order to ensure that quality wrecker services are available to take possession of, handle, and store lost, stolen, or abandoned motor vehicles, vehicles impeding the flow of traffic, and vehicles which may come lawfully into the possession of the city. The Chief of Police seeks to implement these additional regulations through Kissimmee Police Department General Order 434 and the Tow Rotation Application and Inspection Form.

Additionally, the Kissimmee Police Department must furnish Kissimmee Police Department General Order 434 and the Tow Rotation Application and Inspection Form to each licensed wrecker service on the rotating list before such regulations take effect.

Recommendation

Approval of Kissimmee Police Department General Order 434 and the Tow Rotation Application and Inspection Form (Form #156)

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter:

Attachment(s):

1. GO 434 Wrecker Svs Qual and Rotation Listfinal
2. Tow Rotation App and Inspection Form



KISSIMMEE POLICE DEPARTMENT

General Order 434

Title: Wrecker Service Qualifications and Tow Rotation List Guidelines

Effective Date: February 1, 2021

Revised Date: January 14, 2022

Review Authority: Special Operations Division Captain

Scope: All Employees

<u>434.01</u> Wrecker Qualifications and Equipment	<u>434.06</u> Tow Charges
<u>434.02</u> Wrecker Responsibilities	<u>434.07</u> Requesting a Wrecker
<u>434.03</u> Wrecker Files	<u>434.08</u> Specialized Wrecker Request
<u>434.04</u> Complaint, Suspension, and Revocation Processes	<u>434.09</u> Traffic Homicide Investigation Towing
<u>434.05</u> Tow Rotation List	<u>434.10</u> Definitions

Policy: The agency has determined these further regulations for the tow rotation list and performing towing related to a traffic homicide investigation are necessary to carry out the provisions of City Code Chapter 46, Article II.

434.01 Wrecker Service Qualifications and Equipment: To qualify for the Kissimmee Police Department's (KPD) tow rotation list, wrecker services shall have a valid City Business Tax Receipt (BTR) and Osceola County Business Receipt before submitting an application for a wrecker license. Additionally, the applicant shall ensure all requirements on the Tow Rotation Application and Inspection Form have been met. Then, the applicant shall contact (407) 846-3333 and request to speak to the Traffic Enforcement Unit to schedule an inspection.

Inspections. Prior to being placed on the tow rotation list, and annually thereafter, wreckers and wrecker service storage facilities shall be inspected by the Traffic Enforcement Unit to ensure they meet the minimum qualifications mandated by City Code, Florida State Statutes, and this General Order. Wrecker services placed on the tow rotation list shall be available and on call 24 hours a day, seven days a week. The wrecker service must have a storage facility that is surrounded by a secured fence or wall, appropriate security measures, adequate lighting, which allows passing motorists to see inside the facility, adequate space for separate storage of vehicles, and inside storage space. The wrecker inspection shall be completed utilizing the Tow Rotation Application and Inspection Form.

Minimum requirements for wreckers:

- Company name in 3-inch print and address and telephone number in 1-inch print permanently affixed to both sides of the vehicle. See Florida Statute section 713.78(8).
- Vehicle registration
- Vehicle insurance
- Dual rear wheel vehicles
- Tire condition and tread



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- f. Break performance
- g. Lights (Head: D, P, Rear: D, P, Break: D, C, P, Turn: DF, PF, DR, PR, reverse, tag, hazard) and all other equipment as required by Chapter 316, Florida State Statutes
- h. Minimum 1-ton truck capacity
- i. Flashing amber lights with 360-degree visibility
- j. KFD approved fire extinguisher
- k. One heavy duty push broom with a minimum width of 24 inches
- l. One square shovel
- m. Axe
- n. One crowbar or prybar with a minimum length of 30 inches
- o. One pair of bolt cutters with a minimum opening of ½ inch
- p. One set of jumper cables
- q. One four-way lug wrench
- r. One flashlight
- s. Five thirty minute fuses
- t. At least three safety cones or triangle reflectors
- u. Engine-operated winch with minimum 4-ton capacity
- v. 100 feet of cable
- w. Portable break lights
- x. Dolly
- y. Fifty pounds of sand or oil dry
- z. Garbage receptacle

The inspection shall also include criminal history and driver's license status/record checks. All drivers must have a valid Florida Driver's License and no felony convictions or misdemeanor convictions involving dishonesty or moral turpitude within the previous 10 years.

Following an inspection, the Traffic Enforcement Unit shall submit an inspection memo to the Special Operations Division Captain. The Special Operations Division Captain shall determine whether a wrecker service passes or fails an inspection and whether to issue or re-issue a wrecker license. If an inspection finds that a wrecker fails to meet the minimum requirements above, the wrecker service will be temporarily removed from the rotation list and given 14 calendar days to achieve compliance. If the wrecker service achieves compliance within 14 calendar days after the inspection, the wrecker service shall be restored to the tow rotation list. If the wrecker service does not achieve compliance within 14 calendar days after the inspection, the wrecker service shall be removed from the tow rotation list and must reapply. The wrecker service shall contact the Traffic Enforcement Unit to schedule a re-inspection within the 14 day period.

A wrecker license places a wrecker service on the tow rotation list for a period of five (5) years. Wrecker services must reapply for a wrecker license no later than six (6) months prior to the expiration of their wrecker license.



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- a. Applications for renewal will not be denied without reason. The Special Operations Division Captain may consider a wrecker service's pattern of complaints, warnings, suspensions, and/or revocations when deciding whether to re-issue a wrecker license.
- b. Wrecker services who have been suspended from the tow rotation list more than three (3) times during their five (5) year placement will not be eligible for renewal.
- c. Wrecker services found to be ineligible for renewal or denied renewal must wait at least 12 months before reapplying.

434.02 Responsibilities for Wreckers Services on the Rotation List: All wrecker services placed on the tow rotation list shall comply with the following responsibilities:

- a. Adhere to the Wrecker Service Fee Schedule in Attachment A.
- b. Respond to all calls for service in a reasonable time. KPD has determined that a reasonable time is 30 minutes. If a response cannot be made within 30 minutes, the wrecker service shall notify Central Communications at (407) 846-3333 of the estimated time of delay and the reasons for the delay.
 - i. *Failure to answer a call when summoned* - "Failure to answer a call when summoned" means the wrecker service answered a call from KPD for a tow pursuant to the tow rotation list, agreed to respond, and then failed to notify KPD of the estimated time delay or respond to the scene of the tow within 30 minutes after the call is concluded. If the wrecker service notifies KPD of the estimated time of delay and the reasons for the delay, the highest-ranking KPD officer on scene shall determine whether the wrecker service shall be afforded additional time to respond or if the wrecker service's response shall be cancelled. The Traffic Enforcement Unit supervisor shall be notified by Central Communications by email of any such notification of delay. The Traffic Enforcement Unit supervisor shall review such notifications of delay, and, if appropriate, recommend sanctions subject to approval by the Special Operations Division Captain. A first failure to answer a call when summoned shall result in a suspension from the rotation list for one week. A subsequent failure to answer a call when summoned within six months of a suspension shall result in the revocation of the wrecker service's wrecker license.
 - ii. *Failure to answer when called by KPD* - If a wrecker service fails to answer a telephone call from KPD for a tow pursuant to the tow rotation list, that wrecker service will be rotated to the bottom of the tow rotation list and Traffic Enforcement Unit supervisor will be notified by Central Communications via email. If a wrecker service fails to answer a telephone call from KPD for a tow pursuant to the tow rotation list three times within 30 days, the wrecker service shall be suspended from the rotation list for 30 days.
- c. Respond to all calls for service with an approved-wrecker and in a condition to safely remove the vehicle. If the highest-ranking KPD officer on scene reasonably believes that



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the wrecker service cannot safely remove the vehicle, such call for service will be forfeited and treated as a "failure to answer a call when summoned."

- d. When removing a wrecked or damaged vehicle from a street or highway, remove any glass, debris, or other injurious substance reasonably believed to be dropped upon the roadway from such vehicle. These items shall be transported from the scene in a trash receptacle.
- e. Remove pieces of the wrecked vehicle that are in the area of the crash scene.
- f. Contain and treat liquid spills such as transmission fluid, or engine oil.
- g. Affix portable brake lights to the rear of vehicles being towed, when appropriate.
- h. Ensure all vehicles are properly secured prior to leaving the scene.
- i. Inform Central Communications at (407) 846-3333 of any anticipated times of unavailability (i.e., vacations or scheduled equipment maintenance) so Central Communications may remove the wrecker service from the tow rotation list for that time period.
- j. Inform Central Communications at (407) 846-3333 of any unanticipated unavailability (i.e., an employee calls out sick or equipment malfunctions) as soon as practical. Wrecker services may request to be taken off the tow rotation list once within a 45 day period for anticipated or unanticipated periods of unavailability by informing Central Communications.
- k. Immediately notify the Traffic Enforcement Unit of any changes in wrecker drivers, wreckers, wrecker unit number, insurance coverage or any other changes relating to ownership or management of the business.
- l. Only respond to or remove a vehicle that is damaged and impeding the free flow of traffic, disabled, stolen, lost, abandoned or involved in police activity pursuant to a telephone call received directly from KPD or the operator of the damaged or disabled vehicle.
- m. Provide adequate staffing during normal business hours (Monday through Friday 0800 to 1700 hours, excluding federal holidays) at wrecker service facilities to accept payment of towing fees and release towed vehicles and personal property without undue delay.
- n. Post visible signage indicating a telephone number where the owner and/or operator can be contacted when the wrecker service facility is closed. Upon receiving an after-hours request, the owner and/or operator shall arrange for an employee of the wrecker service to accept payment of towing fees and, upon payment, release the towed vehicle within one hour of the request.
- o. Follow all hold orders placed by KPD. Failure to comply with hold orders may result in removal from the tow rotation list.
- p. Exercise reasonable care and control of parts and contents located in vehicles while under the protection of the wrecker service or while in storage at a wrecker service facility.
- q. Upon request, release to the owner or the owner's agent any personal property contained in a towed vehicle regardless of whether payment has been received for the storage or towing of the vehicle unless the vehicle is being held for a Traffic Homicide Investigation (see Section 434.09).



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- r. Wrecker services will be provided a copy of this General Order to ensure compliance.

434.03 Files for Wrecker Services on Tow Rotation List: The Traffic Enforcement Unit Supervisor shall maintain files on each wrecker service awarded a wrecker license. Wrecker files shall be maintained for three fiscal years after a wrecker license becomes inactive. A wrecker service file shall contain the following information:

- a. Original application for the tow rotation list.
- b. Current insurance certificate.
- c. Copy of current wrecker license.
- d. Copy of city and county BTR.
- e. Current mailing address.
- f. Annual inspection record.
- g. Records of any complaints.
- h. Records of any warnings.
- i. Records of any suspensions.
- j. Records of any prior revocations.
- k. Copy of government issued identification with a photograph of owner / applicant.
- l. Verification of Fingerprints and Criminal History check of owner / applicant.

434.04 Complaint, Suspension, and Revocation Processes:

Complaints: Any complaints about wrecker services shall be forwarded to the Traffic Enforcement Unit for investigation. Additionally, the Traffic Enforcement Unit may initiate a complaint if there is reasonable suspicion to believe a wrecker service has violated a provision of a City Ordinance, Florida State Statute or this General Order. All complaints shall be documented in the wrecker service's file. If the Traffic Enforcement Unit determines that a wrecker service has violated a provision of a City Ordinance, Florida State Statute or this General Order, the Traffic Enforcement Unit supervisor should recommend an appropriate sanction for the violation (i.e., warning, suspension, and revocation) and submit a memo through the chain to the Special Operations Division Captain for approval. Once a sanction is approved, notice shall be sent by certified mail to the wrecker service's address on file and the wrecker service shall be provided the opportunity to request a hearing to contest any suspension or revocation before the Special Operations Division Captain within 14 days after the notice was mailed. If no hearing is properly requested, the suspension or revocation becomes effective 14 days after the notice was mailed. If a hearing is requested, the suspension or revocation, if upheld, becomes effective at the conclusion of the hearing.

Emergency Suspensions: The Special Operations Division Captain may suspend a wrecker service from the tow rotation list on an emergency basis at any time due to the expiration or



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cancellation of insurance or if KPD can no longer trust the wrecker service to safeguard the welfare and property of the public. In that event, the Traffic Enforcement Unit supervisor shall submit a memo for approval by the Special Operations Division Captain explaining the reason for the suspension. An emergency suspension shall become effective immediately, however wrecker services shall be noticed of such emergency suspension by certified mail to the address on file and provided the opportunity to request a hearing before the Special Operations Division Captain to contest the emergency suspension within 5 business days after the emergency suspension becomes effective. The filing of an appeal of an emergency suspension shall not stay the suspension.

Appeals: All appeals of suspension, revocation, or denial of a wrecker license must be filed in writing with the Traffic Enforcement Unit within 14 days after notice of the suspension, revocation, or denial has been mailed or, if a hearing is requested, within 14 days after the hearing on the suspension or revocation. Such appeals shall be heard by the City Commission and the decision of the City Commission shall be final.

434.05 Tow Rotation List:

- a. Wrecker services that qualify under Section 434.01 shall be placed on a tow rotation list that will be maintained by Central Communications.
- b. KPD has determined that only 10 wrecker services are needed to operate the tow rotation list, as a result, there will be no more than 10 companies on the tow rotation list at one time.
- c. Wrecker services shall be called in the order beginning at the top of the list. Following each call, the wrecker service shall be rotated to the bottom of the list.
- d. Wrecker services shall not be rotated and will maintain their current position on the rotation list if the wrecker service is called at the vehicle owner's request.
- e. For multiple car accidents involving multiple disabled vehicles when more than one wrecker is needed, a separate wrecker service shall be assigned to remove each vehicle. All wrecker services assigned to a multiple car accident shall be rotated to the bottom of the list.
- f. If a wrecker service responds to a call pursuant to the rotation list and removal of the vehicle is not required, the wrecker service may charge a reasonable fee for services rendered, which shall include but not be limited to changing a flat tire, providing gas or use of battery jumper cables, assisting in starting a vehicle, or unlocking a vehicle not to exceed \$35. The fee does not include the cost of parts or labor required for any authorized vehicle repairs made at roadside, which may be charged by the wrecker service in addition to the service fee. A wrecker service is prohibited from assessing a towing charge if the vehicle is not removed. The wrecker service which renders services rather than towing a vehicle shall not be rotated to the bottom of the rotation list but shall remain at the top of the list for the next available call.



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- g. A request for a wrecker may be canceled by KPD at any time before service is initiated. In that case, the responding wrecker service will not be rotated. KPD Employees will inform Central Communications of the reason for the cancellation.
- h. In the event a wrecker service fails to answer the telephone when called by KPD for a tow pursuant to the tow rotation list, that wrecker service shall be rotated to the bottom of the list. Repeated failure to answer such telephone calls may result in suspension from the rotation list as outlined in section 434.04 of this General Order.
- i. A vehicle inventory form shall be completed either digitally via One Solution or by handwriting on all vehicles removed by a wrecker, except for vehicles towed at the owner's/driver's request for non-criminal vehicle crashes.
- j. Towing of vehicles involved in traffic crashes resulting in fatal injuries, or injuries to a person serious enough to warrant a Traffic Homicide Investigation have additional requirements detailed in section 434.09 of this General Order.

434.06 Towing Charges: Wrecker services shall comply with the Wrecker Service Fee Schedule (Fee Schedule) (Attachment A) for all tows made pursuant to the tow rotation list.

The distance a vehicle is towed shall not include the distance traveled to pick up the vehicle. Instead, the distance a vehicle is towed shall be the distance travelled between the location where the vehicle is hooked up to the location where the vehicle is to be stored using the most direct route.

Wrecker services shall not charge for storing a towed vehicle for the initial six hours of storage, thereafter wrecker services may charge for tow storage pursuant to the Fee Schedule.

Wrecker services may charge an administrative fee pursuant to the Fee Schedule after storing a vehicle towed pursuant to the tow rotation list for more than 48 hours if the wrecker service has complied with the requirements of Florida State Statute 713.78 including the execution and mailing of the lien notice.

Wrecker services may charge an after hours gate fee pursuant to the Fee Schedule when the wrecker service responds to a call to release a towed vehicle between 5:01 p.m. and 7:59 a.m.

Traffic Enforcement Unit may inspect a wrecker service's business records to ensure compliance with the Fee Schedule on an annual basis, at the request of a wrecker service on the tow rotation list, or during normal business hours if the Traffic Enforcement Unit supervisor has determined reasonable suspicion exists that the wrecker service has violated the Fee Schedule.

434.07 Requesting a Wrecker from the Tow Rotation List: A KPD Officer or Community Service Officer may request a wrecker from the tow rotation list to remove a vehicle that is damaged and impeding the free flow of traffic, disabled, stolen, lost, abandoned or involved in



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police activity. KPD Employees will request wreckers from the tow rotation list by contacting Central Communications. KPD employees will advise Central Communications of all vehicle information needed for the completion of the wrecker log to include vehicle year, make, model, license plate number and any special circumstances that may require special equipment. This should be done when requesting the wrecker, or prior to leaving the scene and will apply in all instances where a wrecker is used.

Vehicle(s) which are towed will be logged with Central Communications to include:

- a. License plate(s).
- b. Make and model.
- c. Color.
- d. In the event a vehicle to be towed does not have a license plate, or it is incorrect, the employee will also log the Vehicle Identification Number (VIN).

If a vehicle owner requests for utilization of a specific wrecker service, then the owner's request shall be honored without resort to the tow rotation list unless there will be an unreasonable time delay of 30 minutes or more or a traffic problem exists. KPD employees will inform Central Communications when a vehicle owner requests a specific wrecker requests so an estimated response time can be ascertained.

When multiple vehicles are involved in a crash and more than one wrecker is needed, a KPD employee will transmit the description of the vehicles to be towed. A separate wrecker will be contacted to tow each vehicle. In such cases, KPD shall assign the wrecker services to remove a specific vehicle. The first wrecker services on the scene may be required to move vehicles from the roadway, and such movement shall not affect the assignment of vehicles. No fee shall be charged for such service.

434.08 Specialized Wrecker Requests:

- a. KPD employees may request a wrecker other than from the rotation list if the situation requires specialized services to include the removal of semi-trucks, busses or recreational vehicles.
- b. Before requesting a wrecker in specialized situations, KPD employees should attempt to ascertain the weight, length and type of load being transported and any other information that will assist the wrecker service to determine what kind of equipment will be needed.
- c. KPD employees shall not request a specialized equipment such as a flatbed wrecker unless it is necessary for the removal of the vehicle.

434.09 Traffic Homicide Investigations Towing: Due to the unique nature of Traffic Homicide Investigations, if a wrecker service wishes to be placed on the rotation list for Traffic Homicide Investigations towing, the wrecker service must contact the Traffic Enforcement Unit supervisor and be able to adhere to the following additional requirements:



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- a. Wrecker service must be on the tow rotation list.
- b. Vehicles towed for a THI investigation will be placed on Hold status unless released by the officers at the scene.
- c. Must have a secure indoor storage facility large enough to store two class A vehicles. The indoor storage facility must be separate from other storage with limited access to the driver, for loading or unloading, and a supervisor/manager only.
- d. All crash related items and vehicle pieces will be collected and placed in the secure storage area, with any vehicles.
- e. Must have access to certified scales for weighing vehicles when appropriate. The certified scales can be either at the wrecker service's facility or through an agreement with a nearby business with certified scales.
- f. If a vehicle is sealed by KPD, keep such seals intact until such seals are removed by KPD.
- g. Only release property from vehicles with the approval of the lead KPD detective.
- h. If vehicles continue to be held after inspection and weighing, the wrecker service and officer in charge of the investigation will arrange to have the vehicles towed to the KPD's secure storage facility located at the City of Kissimmee Service Center for storage.
- i. Once the hold on the vehicles is released, the wrecker service will be responsible for physically releasing the vehicles to the proper owner. If necessary, the wrecker service may tow the released vehicles back to their facility for release.

434.10 Definitions:

Class A Vehicle – A vehicle with a Gross Vehicle Weight (GVW) up to 10,000 pounds or a vehicle carrying a vessel 15 feet or less in length.

Class B Vehicle – A vehicle with a GVW of at least 10,001 pounds, but less than 19,500 pounds, or a vehicle carrying a vessel more than 15 feet, but less than 22 feet.

Class C Vehicle – A Vehicle with a GVW of at least 19,501 pounds, but less than 26,000 pounds, or a vehicle carrying a vessel more than 22 feet in length.

Class D Vehicle – A vehicle with a GVW of more than 26,001 pounds.

Wrecker Service – An individual, partnership or business entity engaged in the recovery, towing, removal, servicing or temporarily disabling (i.e., "booting") of vehicles that are damaged and impeding the free flow of traffic, disabled, stolen, lost, abandoned or involved in police activity. A hired driver or employee shall be governed by these rules and shall be considered an agent of the wrecker service.



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ATTACHMENT A

Wrecker Service Fee Schedule

After Hours Gate Fee: \$50.00

Hazardous Material Cleanup \$50.00

Administrative Fee: \$45.00

Class A Vehicles GVW THROUGH 10,000 POUNDS OR VEHICLE CARRYING A VESSEL 15 FEET OR LESS IN LENGTH	
1. Flat Rate for Towing:	\$125.00
2. Tow per Full Mile over 10 Miles:	\$3.00
3. Time Beyond Initial 30 Minutes at scene:	\$15.00 (per 15-minute block)
4. Tow Storage Per Day: (outdoor)	\$20.00
5. Tow Storage Per Day: (Indoor)	\$30.00
Class B Vehicles GVW 10,001 LBS OR MORE & LESS THAN 19,500 POUNDS OR VEHICLE CARRYING A VESSEL MORE THAN 15 FT BUT LESS THAN 22 FT	
1. Flat Rate for Towing:	\$250.00
2. Tow per Full Mile over 10 Miles:	\$4.00
3. Time Beyond Initial 30 Minutes at scene:	\$50.00 (per 15-minute block)
4. Tow Storage Per Day: (outdoor)	\$30.00
5. Tow Storage Per Day: (Indoor)	\$40.00
Class C Vehicles GVW 19,500 OR MORE POUNDS BUT LESS THAN 25,000 POUNDS OR VEHICLE CARRYING A VESSEL MORE THAN 22 FEET IN LENGTH	
1. Flat Rate for Towing:	\$375.00
2. Tow per Full Mile over 10 Miles:	\$5.00
3. Time Beyond Initial 30 Minutes at scene:	\$75.00 (per 15-minute block)
4. Tow Storage Per Day: (outdoor)	\$60.00
5. Tow Storage Per Day: (Indoor)	\$70.00
Class D Vehicles GVW MORE THAN 25,000 POUNDS	
1. Flat Rate for Towing:	\$500.00
2. Tow per Full Mile over 10 Miles:	\$6.00
3. Time Beyond Initial 30 Minutes at scene:	\$100.00 (per 15-minute block)
4. Tow Storage Per Day: (outdoor)	\$60.00
5. Tow Storage Per Day: (Indoor)	\$70.00

Tow Rotation Application and Inspection Form

Tow Company: _____ Date: _____ Time: _____
Truck #: _____ Make: _____ Tag #: _____
US DOT#: _____ ICC/MCC#: _____
Inspected by: _____ ID #: _____

Required Documents

- Valid City of Kissimmee Business Tax Receipt (one license per location)
- Garagekeeper's and other liability insurance not less than \$100,000 for injury or death of any person
- Insurance not less than \$300,000 for death or injury of more than one person
- Insurance not less than \$25,000 for all damage resulting to personal property
- Applicant's government issued identification
- Applicant's fingerprints
- Prepared Billheads – Ordinance 46-26 (name and address of business) to include:
 - Name and address of the customer
 - State and license plate of vehicle involved
 - Make, model, year, color, and VIN # of the vehicle
 - Total amount to be charged for the service
 - Wrecker service must retain copy of the bill for a minimum of 6 months

Storage Facility Requirements

- Location surrounded by a fence or wall. Height _____
- Location security / access limited
- Appropriate storage space
- Separate storage for vehicles
- Inside storage
- Proper lot illumination
- Wrecker Yard Address _____

Required Equipment (per vehicle)

- Company name in 3-inch print and address and telephone number in 1-inch print permanently affixed to both sides of the vehicle. See Florida Statute section 713.78(8).
- Vehicle registration
- Vehicle insurance
- Dual rear wheel vehicles
- Tire condition and tread
- Break performance

Tow Rotation Application and Inspection Form

- Lights (Head: D, P, Rear: D, P, Break: D, C, P, Turn: DF, PF, DR, PR, reverse, tag, hazard) and all other equipment as required by Chapter 316, Florida State Statutes
- Minimum 1-ton truck capacity
- Flashing amber lights with 360-degree visibility
- KFD approved fire extinguisher
- One heavy duty push broom with a minimum width of 24 inches
- One square shovel
- Axe
- One crowbar or prybar with a minimum length of 30 inches
- One pair of bolt cutters with a minimum opening of ½ inch
- One set of jumper cables
- One four-way lug wrench
- One flashlight
- Five thirty-minute fuses
- At least three safety cones or triangle reflectors
- Engine-operated winch with minimum 4-ton capacity
- 100 feet of cable
- Portable break lights
- Dolly
- Fifty pounds of sand or oil dry
- Garbage receptacle

Problems at inspection:

If an inspection finds that a wrecker fails to meet the minimum requirements above, the wrecker service will be temporarily removed from the rotation list and given 14 calendar days to achieve compliance. If the wrecker service achieves compliance within 14 calendar days after the inspection, the wrecker service shall be restored to the tow rotation list. If the wrecker service does not achieve compliance within 14 calendar days after the inspection, the wrecker service shall be removed from the tow rotation list and must reapply. The wrecker service shall contact the Traffic Enforcement Unit to schedule a re-inspection within the 14-day period.

Follow up inspection due date: _____

Tow Rotation Application and Inspection Form

Inspector's signature _____ Date _____

Follow up inspection results:

Inspector's signature _____ Date _____

Supervisor's signature _____ Date _____ \

ITEM 7.G**Sonoma Resort at Tapestry, Phase 2A – Major Subdivision, Final Plat (DRC# 19-00165)****Request**

Approval of the final plat known as Sonoma Resort at Tapestry, Phase 2A.

Explanation

The owners of the property, Park Square Enterprises, LLC, and Hallmark Equity Partners, LLC, are requesting final plat approval without a guarantee. The property is located west of W. Carroll Street and north of W. Donegan Avenue and is being subdivided into 3 tracts and 12 fee-simple lots for development purposes. All tracts and lots are to be privately owned and maintained. This is a Major Subdivision, as defined in Land Development Code §14-2, and the preliminary and final plat procedure was utilized.

The required subdivision improvements for the fee-simple lots were previously constructed by the developer and accepted by the City. Therefore, no performance guarantee is required.

Recommendation

Staff recommends City Commission approval of the Sonoma Resort at Tapestry, Phase 2A .

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. DRC-19-00165 SONOMA PHASE 2A PLAT_2.7.2022
2. DRC-19-00165 SONOMA PHASE 2A PLAT_VM

SONOMA RESORT AT TAPESTRY - PHASE 2A

SHEET 1 OF 3

PLAT BOOK PAGE

A REPLAT OF TRACT B, TRACT C, AND A PORTION OF TRACT L PER THE PLAT OF SONOMA RESORT AT TAPESTRY - PHASE 1 AS RECORDED IN PLAT BOOK 23, PAGES 101 THROUGH 105 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SITUATED WITHIN SECTION 7, TOWNSHIP 25 SOUTH, RANGE 29 EAST, CITY OF KISSIMMEE, OSCEOLA COUNTY, FLORIDA.

LEGAL DESCRIPTION

A REPLAT OF TRACT B, TRACT C, AND A PORTION OF TRACT L PER THE PLAT OF SONOMA RESORT AT TAPESTRY – PHASE 1 AS RECORDED IN PLAT BOOK 23, PAGES 101 THROUGH 105 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SITUATED WITHIN SECTION 7, TOWNSHIP 25 SOUTH, RANGE 29 EAST, CITY OF KISSIMMEE, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST–MOST NORTHEAST CORNER OF TRACT J OF SAID PLAT; THENCE ALONG THE NORTHERLY AND WESTERLY BOUNDARY LINE OF SAID TRACT J THE FOLLOWING TWENTY–THREE (23) COURSES AND DISTANCES; (1) THENCE RUN NORTH 53°09'45" WEST A DISTANCE OF 32.31 FEET; (2) THENCE RUN NORTH 20°49'34" WEST A DISTANCE OF 28.12 FEET; (3) THENCE RUN NORTH 10°54'09" EAST A DISTANCE OF 7.02 FEET; (4) THENCE RUN NORTH 88°58'35" WEST A DISTANCE OF 246.71 FEET; (5) THENCE RUN SOUTH 79°55'45" WEST A DISTANCE OF 143.98 FEET; (6) THENCE RUN NORTH 62°57'33" WEST A DISTANCE OF 70.50 FEET; (7) THENCE RUN NORTH 55°15'31" WEST A DISTANCE OF 104.23 FEET; (8) THENCE RUN NORTH 51°32'06" WEST A DISTANCE OF 67.17 FEET; (9) THENCE RUN NORTH 39°56'49" WEST A DISTANCE OF 100.58 FEET; (10) THENCE RUN NORTH 52°18'28" WEST A DISTANCE OF 87.17 FEET; (11) THENCE RUN NORTH 64°54'57" WEST A DISTANCE OF 75.78 FEET; (12) THENCE RUN NORTH 88°10'17" WEST A DISTANCE OF 80.18 FEET; (13) THENCE RUN SOUTH 58°33'23" WEST A DISTANCE OF 109.56 FEET; (14) THENCE RUN SOUTH 48°50'38" WEST A DISTANCE OF 88.78 FEET; (15) THENCE RUN SOUTH 35°25'03" WEST A DISTANCE OF 64.47 FEET; (16) THENCE RUN SOUTH 48°31'25" WEST A DISTANCE OF 76.20 FEET; (17) THENCE RUN SOUTH 42°56'29" WEST A DISTANCE OF 117.30 FEET; (18) THENCE RUN SOUTH 29°04'49" WEST A DISTANCE OF 98.83 FEET; (19) THENCE RUN SOUTH 19°29'38" WEST A DISTANCE OF 125.08 FEET; (20) THENCE RUN SOUTH 23°07'02" EAST A DISTANCE OF 47.47 FEET; (21) THENCE RUN SOUTH 57°52'39" EAST A DISTANCE OF 117.18 FEET; (22) THENCE RUN SOUTH 76°55'50" EAST A DISTANCE OF 123.31 FEET; (23) THENCE RUN SOUTH 81°16'10" EAST A DISTANCE OF 171.85 FEET TO THE SOUTH–MOST EAST CORNER OF TRACT B OF AFORESAID PLAT; THENCE ALONG THE SOUTHERLY, WESTERLY, AND NORTHERLY BOUNDARY OF SAID TRACT B RUN THE FOLLOWING ELEVEN (11) COURSES AND DISTANCES: (1) SOUTH 89°36'57" WEST A DISTANCE OF 1173.55 FEET (2) THENCE RUN NORTH 00°10'46" EAST A DISTANCE OF 377.72 FEET; (3) THENCE RUN NORTH 03°56'51" EAST A DISTANCE OF 96.73 FEET; (4) THENCE RUN NORTH 31°33'50" EAST A DISTANCE OF 471.57 FEET; (5) THENCE RUN NORTH 37°48'23" EAST A DISTANCE OF 165.98 FEET; (6) THENCE RUN NORTH 48°13'38" EAST A DISTANCE OF 479.69 FEET; (7) THENCE RUN NORTH 60°00'17" EAST A DISTANCE OF 344.06 FEET; (8) THENCE RUN SOUTH 26°24'19" EAST A DISTANCE OF 121.73 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1526.00 FEET, A CENTRAL ANGLE OF 08°52'00", AND A CHORD DISTANCE OF 235.92 FEET WHICH BEARS NORTH 68°01'41" EAST; (9) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 236.15 FEET TO A POINT OF TANGENCY WITH A LINE; (10) THENCE ALONG SAID TANGENT LINE RUN NORTH 72°27'41" EAST A DISTANCE OF 71.58 FEET; (11) THENCE RUN SOUTH 21°59'58" EAST A DISTANCE OF 52.16 FEET TO THE NORTH–MOST POINT OF TRACT C OF SAID PLAT AND A POINT OF NON–TANGENCY WITH A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 76°51'45", AND A CHORD DISTANCE OF 31.08 FEET WHICH BEARS SOUTH 69°06'26" EAST; (1) THENCE ALONG THE NORTHERLY AND EASTERLY BOUNDARY OF SAID TRACT C RUN ALONG THE ARC OF SAID CURVE FOR A LENGTH OF 33.54 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE TO THE LEFT, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 130.00 FEET, A CENTRAL ANGLE OF 42°10'12", AND A CHORD DISTANCE OF 95.68 FEET WHICH BEARS SOUTH 51°45'40" EAST; (2) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 95.68 FEET TO A POINT OF TANGENCY; (3) THENCE ALONG SAID NON–TANGENT CURVE RUN SOUTH 72°50'46" EAST A DISTANCE OF 368.32 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE LEFT, CONCAVE NORTHERLY, HAVING A RADIUS OF 429.50 FEET, A CENTRAL ANGLE OF 18°14'01", AND A CHORD DISTANCE OF 136.11 FEET WHICH BEARS SOUTH 81°57'47" EAST; (4) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 136.68 FEET TO A POINT OF TANGENCY WITH A LINE; (5) THENCE ALONG SAID TANGENT LINE RUN NORTH 88°55'13" EAST A DISTANCE OF 61.77 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE LEFT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 479.50 FEET, A CENTRAL ANGLE OF 10°33'29", AND A CHORD DISTANCE OF 88.24 FEET WHICH BEARS NORTH 83°38'28" EAST; (6) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 88.36 FEET TO A POINT OF CONTINUED CURVATURE WITH A CURVE TO THE LEFT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 109.00 FEET, A CENTRAL ANGLE OF 16°34'15", AND A CHORD DISTANCE OF 31.41 FEET WHICH BEARS NORTH 70°04'36" EAST; (7) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 31.52 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 87°48'02", AND A CHORD DISTANCE OF 34.67 FEET WHICH BEARS SOUTH 74°18'30" EAST; (8) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 38.31 FEET TO A POINT OF NON–TANGENCY WITH A LINE; (9) THENCE ALONG SAID NON–TANGENT LINE RUN NORTH 59°39'47" EAST A DISTANCE OF 55.60 FEET TO A POINT OF NON–TANGENCY WITH A CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 117°46'06", AND A CHORD DISTANCE OF 42.81 FEET WHICH BEARS NORTH 42°02'59" EAST; (10) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 51.39 FEET TO A POINT OF TANGENCY WITH A LINE; (11) THENCE ALONG SAID TANGENT LINE RUN SOUTH 79°03'58" EAST A DISTANCE OF 160.95 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 30.00 FEET, A CENTRAL ANGLE OF 90°00'00", AND A CHORD DISTANCE OF 42.43 FEET WHICH BEARS SOUTH 34°03'58" EAST; (12) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 47.12 FEET TO A POINT OF TANGENCY WITH A LINE; (13) THENCE ALONG SAID TANGENT LINE RUN SOUTH 10°56'02" WEST A DISTANCE OF 427.90 FEET TO A POINT OF CURVATURE WITH A CURVE TO THE RIGHT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 986.94 FEET, A CENTRAL ANGLE OF 32°44'47", AND A CHORD DISTANCE OF 556.42 FEET WHICH BEARS SOUTH 27°18'25" WEST; (14) THENCE ALONG THE ARC OF SAID CURVE RUN FOR A LENGTH OF 564.07 FEET RETURNING TO THE POINT OF BEGINNING.

CONTAINING 2,171,131 SQUARE FEET OR 49.842 ACRES, MORE OR LESS.

SURVEYOR'S NOTES

1. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTHERLY BOUNDARY OF TRACT B OF THE PLAT OF SONOMA RESORT AT TAPESTRY – PHASE 1, BEING SOUTH 89°36'57" WEST AS RECORDED IN PLAT BOOK 23, PAGES 101–105 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA.
2. TRACTS FD–1 AND FD–2, AS SHOWN HEREON, ARE RESERVED UNTO PARK SQUARE ENTERPRISES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, THEIR SUCCESSORS AND/OR ASSIGNS FOR THE PURPOSE OF FUTURE DEVELOPMENT, AND SHALL BE MAINTAINED BY THE SAME.
3. TRACT FD–3 AS SHOWN HEREON, IS RESERVED UNTO HALLMARK EQUITY PARTNERS, LLC, A TEXAS LIMITED LIABILITY COMPANY, THEIR SUCCESSORS AND/OR ASSIGNS FOR THE PURPOSE OF FUTURE DEVELOPMENT, AND SHALL BE MAINTAINED BY THE SAME.
4. THERE IS A 10.00 FOOT WIDE DRAINAGE AND UTILITY EASEMENT ALONG THE ROAD RIGHT–OF–WAY OF ALL LOTS AND A 5.00 FOOT WIDE DRAINAGE AND UTILITY EASEMENT ALONG THE SIDE AND REAR OF ALL LOTS.
5. THE DRAINAGE EASEMENTS ARE HEREBY DEDICATED TO THE SONOMA RESORT AT TAPESTRY HOMEOWNERS' ASSOCIATION, INC.
6. THE PEDESTRIAN AND BICYCLE EASEMENT AND THE DRAINAGE EASEMENTS SHALL REMAIN PERPETUALLY UNOBSTRUCTED BY PERMANENT STRUCTURES OR LANDSCAPING TREES.
7. ALL PLATTED UTILITY EASEMENTS SHALL PROVIDE THAT SUCH EASEMENTS SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES; PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS, OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES. THIS SECTION SHALL NOT APPLY TO THOSE PRIVATE EASEMENTS GRANTED OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS, OR OTHER PUBLIC UTILITY. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
8. ALL LOT AND TRACT CORNERS AND CHANGE IN DIRECTION SHALL BE MONUMENTED WITH A 1/2" IRON ROD AND CAP ("LB 6393") OR NAIL AND DISC "LB 6393" IN ACCORDANCE WITH CHAPTER 177.091 (9) FLORIDA STATUTES.
9. ALL LINES WITHIN THIS PLAT WHICH INTERSECT CURVILINEAR LOT LINES ARE RADIAL UNLESS OTHERWISE DENOTED AS NON–RADIAL(NR).
10. ALL RECORDING INFORMATION SHOWN HEREON IS REFERENCING THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA.

SONOMA RESORT AT TAPESTRY - PHASE 2A

DEDICATION

KNOW BY ALL MEN BY THESE PRESENTS, THAT PARK SQUARE ENTERPRISES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, BEING THE OWNER IN FEE SIMPLE OF THE LANDS IN THE FOREGOING CAPTION TO THIS PLAT, LESS TRACT FD–3, AS DESCRIBED HEREON, DOES HEREBY DEDICATE SAID LANDS AND PLAT FOR THE USES AND PURPOSES THEREIN EXPRESSED AND DEDICATES THE PEDESTRIAN AND BICYCLE EASEMENT AND THE UTILITY EASEMENTS TO THE PERPETUAL USE OF THE PUBLIC.

BY: PARK SQUARE ENTERPRISES, LLC, A DELAWARE LIMITED LIABILITY COMPANY

SIGNATURE DATE

PRINT NAME TITLE

WITNESSES:

SIGNATURE SIGNATURE

PRINT NAME PRINT NAME

NOTARY ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF [] PHYSICAL PRESENCE OR [] ONLINE NOTARIZATION, THIS DAY OF 20 BY AS OF PARK SQUARE ENTERPRISES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF THE COMPANY, HE/SHE IS [] PERSONALLY KNOWN TO ME OR [] HAS PRODUCED AS IDENTIFICATION.

WITNESS MY HAND AND OFFICIAL SEAL IN THE COUNTY AND STATE LAST AFORESAID THIS DAY OF 20

PRINT NAME
MY COMMISSION NUMBER IS:

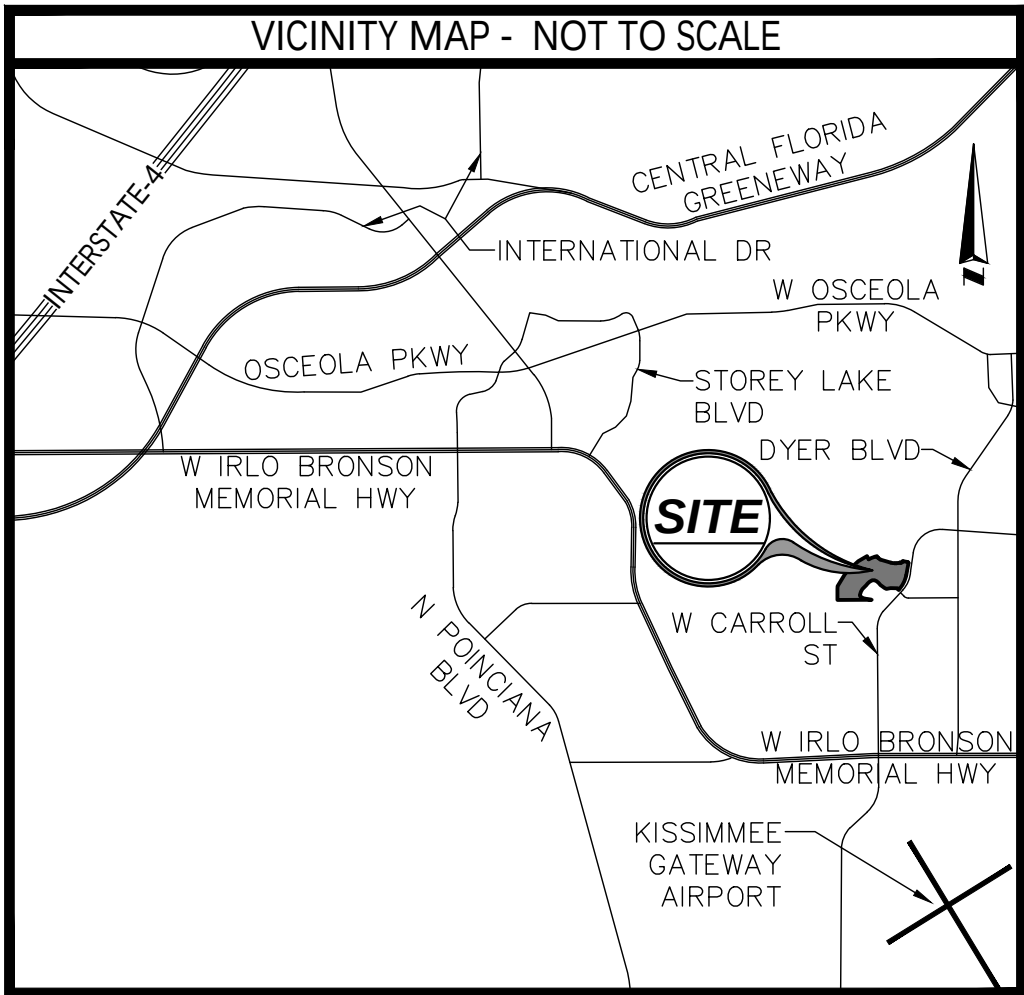
MY COMMISSION EXPIRES:

CERTIFICATE OF SURVEYOR AND MAPPER

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, BEING A PROFESSIONAL SURVEYOR AND MAPPER CERTIFIES THAT I HAVE PREPARED THE FOREGOING PLAT AND IT WAS MADE UNDER MY DIRECTION AND SUPERVISION AND THAT THE PLAT COMPLIES WITH ALL OF THE SURVEY REQUIREMENTS OF CHAPTER 177, PART 1, PLATTING, FLORIDA STATUTES; AND THAT SAID LAND IS LOCATED IN THE CITY OF KISSIMMEE, OSCEOLA COUNTY, FLORIDA.

SIGNED: DATED

E. GLENN TURNER, PSM FLORIDA REGISTRATION NO. 5643
AMERICAN SURVEYING AND MAPPING, INC.
REGISTRATION NUMBER L.B. NO. 6393
3191 MAGUIRE BOULEVARD, SUITE 200
ORLANDO, FLORIDA 32803 (407) 426–7979



LEGEND

- = FOUND 4"x4" CONCRETE MONUMENT (PRM LB 7194) (UNLESS OTHERWISE NOTED)
- R = RADIUS
- Δ = CENTRAL ANGLE (DELTA)
- CH = CHORD DISTANCE
- CB = CHORD BEARING
- L = ARC LENGTH
- C# = CURVE TAG (SEE CORRESPONDING CURVE TABLE)
- DE = DRAINAGE EASEMENT
- DUE = DRAINAGE AND UTILITY EASEMENT
- L# = LINE TAG (SEE CORRESPONDING LINE TABLE)
- LB = LICENSED BUSINESS
- (NR) = NON–RADIAL
- PC = POINT OF CURVATURE
- PCP = PERMANENT REFERENCE POINT
- PI = POINT OF INTERSECTION
- PNT = POINT OF NON–TANGENCY
- PRC = POINT OF REVERSE CURVATURE
- PRM = PERMANENT REFERENCE POINT
- PSM = PROFESSIONAL SURVEYOR AND MAPPER
- PT = POINT OF TANGENCY
- RP = RADIUS POINT

"FLOOD HAZARD WARNING"

THIS PROPERTY MAY BE SUBJECT TO FLOODING. YOU SHOULD CONTACT OSCEOLA COUNTY AND OBTAIN THE LATEST INFORMATION ON FLOOD ELEVATIONS AND RESTRICTIONS BEFORE MAKING PLANS FOR USE OF THIS PROPERTY. EVEN MEETING LOCAL MUNICIPAL STANDARDS DOES NOT ENSURE ANY IMPROVEMENTS SUCH AS STRUCTURES, DRIVEWAYS, YARDS, SANITARY SEWER SYSTEMS WILL NOT BE FLOODED IN CERTAIN RAIN EVENTS.

NOTICE

THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.



SEE SHEET 1 OF 3 FOR LEGAL DESCRIPTION, SURVEYOR'S NOTES, AND LEGEND
SEE SHEET 2 OF 3 FOR OVERALL VIEW OF PLAT
SEE SHEET 3 OF 3 PLAT BOUNDARY, LOT, TRACT, AND EASEMENT DETAIL

SONOMA RESORT AT TAPESTRY - PHASE 2A

DEDICATION

KNOW BY ALL MEN BY THESE PRESENTS, THAT HALLMARK EQUITY PARTNERS, LLC, A TEXAS LIMITED LIABILITY COMPANY, BEING THE OWNER IN FEE SIMPLE OF THE LANDS DESCRIBED AS TRACT FD–3 IN THE FOREGOING CAPTION TO THIS PLAT, DOES HEREBY DEDICATE SAID LANDS AND PLAT FOR THE USES AND PURPOSES THEREIN EXPRESSED AND DEDICATES THE UTILITY EASEMENTS TO THE PERPETUAL USE OF THE PUBLIC.

BY: HALLMARK EQUITY PARTNERS, LLC, A TEXAS LIMITED LIABILITY COMPANY

SIGNATURE DATE

PRINT NAME TITLE

WITNESSES:

SIGNATURE SIGNATURE

PRINT NAME PRINT NAME

NOTARY ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF [] PHYSICAL PRESENCE OR [] ONLINE NOTARIZATION, THIS DAY OF 20 BY AS OF HALLMARK EQUITY PARTNERS, LLC, A TEXAS LIMITED LIABILITY COMPANY, ON BEHALF OF THE COMPANY, HE/SHE IS [] PERSONALLY KNOWN TO ME OR [] HAS PRODUCED AS IDENTIFICATION.

WITNESS MY HAND AND OFFICIAL SEAL IN THE COUNTY AND STATE LAST AFORESAID THIS DAY OF 20

PRINT NAME
MY COMMISSION NUMBER IS:

MY COMMISSION EXPIRES:

CERTIFICATE OF APPROVAL BY CITY SURVEYOR

UPON REVIEW, THIS PLAT WAS FOUND TO BE IN COMPLIANCE WITH CHAPTER 177, FLORIDA STATUTES.

SIGNATURE DATE

PRINT

PROFESSIONAL SURVEYOR AND MAPPER
REPRESENTING THE CITY OF KISSIMMEE

FLORIDA REGISTRATION NO.

CERTIFICATE OF APPROVAL BY CITY COMMISSION, CITY OF KISSIMMEE

THIS IS TO CERTIFY, THAT ON THE CITY COMMISSION, CITY OF KISSIMMEE APPROVED THE ABOVE PLAT.

MAYOR/COMMISSIONER

CITY MANAGER

CERTIFICATE OF COUNTY CLERK

I HEREBY CERTIFY, THAT I HAVE EXAMINED THE FOREGOING PLAT AND FIND THAT IT COMPLIES IN FORM WITH THE REQUIREMENTS OF OSCEOLA COUNTY LAND DEVELOPMENT CODE AND WAS FILED FOR RECORD ON AT

FILE NO.

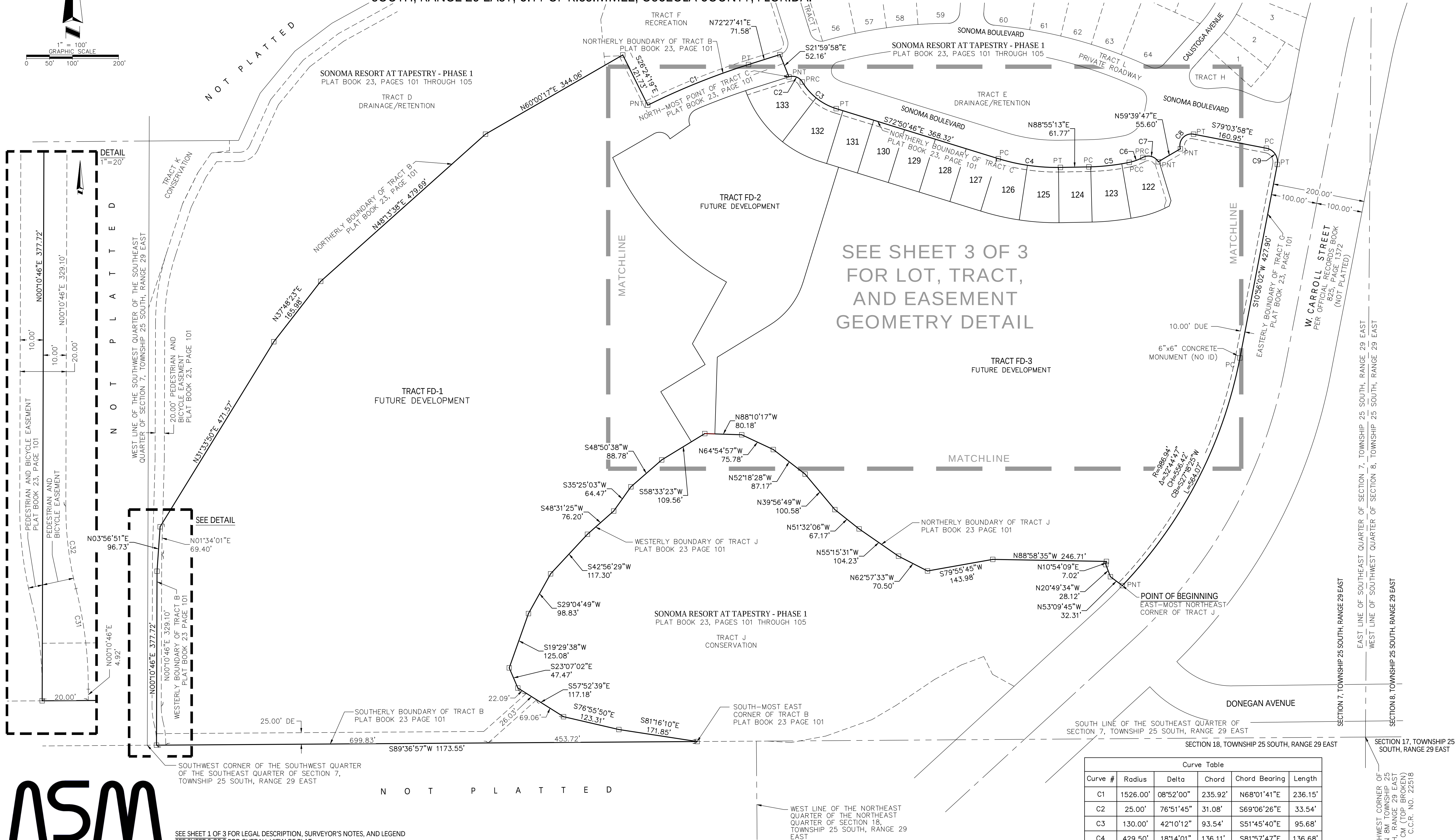
CLERK OF THE CIRCUIT COURT
IN AND FOR OSCEOLA COUNTY, FLORIDA

BY: D.C.

DRC #19–00165

SONOMA RESORT AT TAPESTRY - PHASE 2A

A REPLAT OF TRACT B, TRACT C, AND A PORTION OF TRACT L PER THE PLAT OF SONOMA RESORT AT TAPESTRY - PHASE 1 AS RECORDED IN PLAT BOOK 23, PAGES 101 THROUGH 105 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SITUATED WITHIN SECTION 7, TOWNSHIP 25 SOUTH, RANGE 29 EAST, CITY OF KISSIMMEE, OSCEOLA COUNTY, FLORIDA.



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& MAPPING, INC.
NDDS NATIONAL DUE
DILIGENCE SERVICES
A DIVISION OF AMERICAN SURVEYING & MAPPING, INC.
3191 Maguire Blvd, Suite 200, Orlando, FL 32803 Phone: 407-426-7979
nationalduediligenceservices.com

SEE SHEET 1 OF 3 FOR LEGAL DESCRIPTION, SURVEYOR'S NOTES, AND LEGEND
SEE SHEET 2 OF 3 FOR OVERALL VIEW OF PLAT
SEE SHEET 3 OF 3 PLAT BOUNDARY, LOT, TRACT, AND EASEMENT DETAIL

NOTICE

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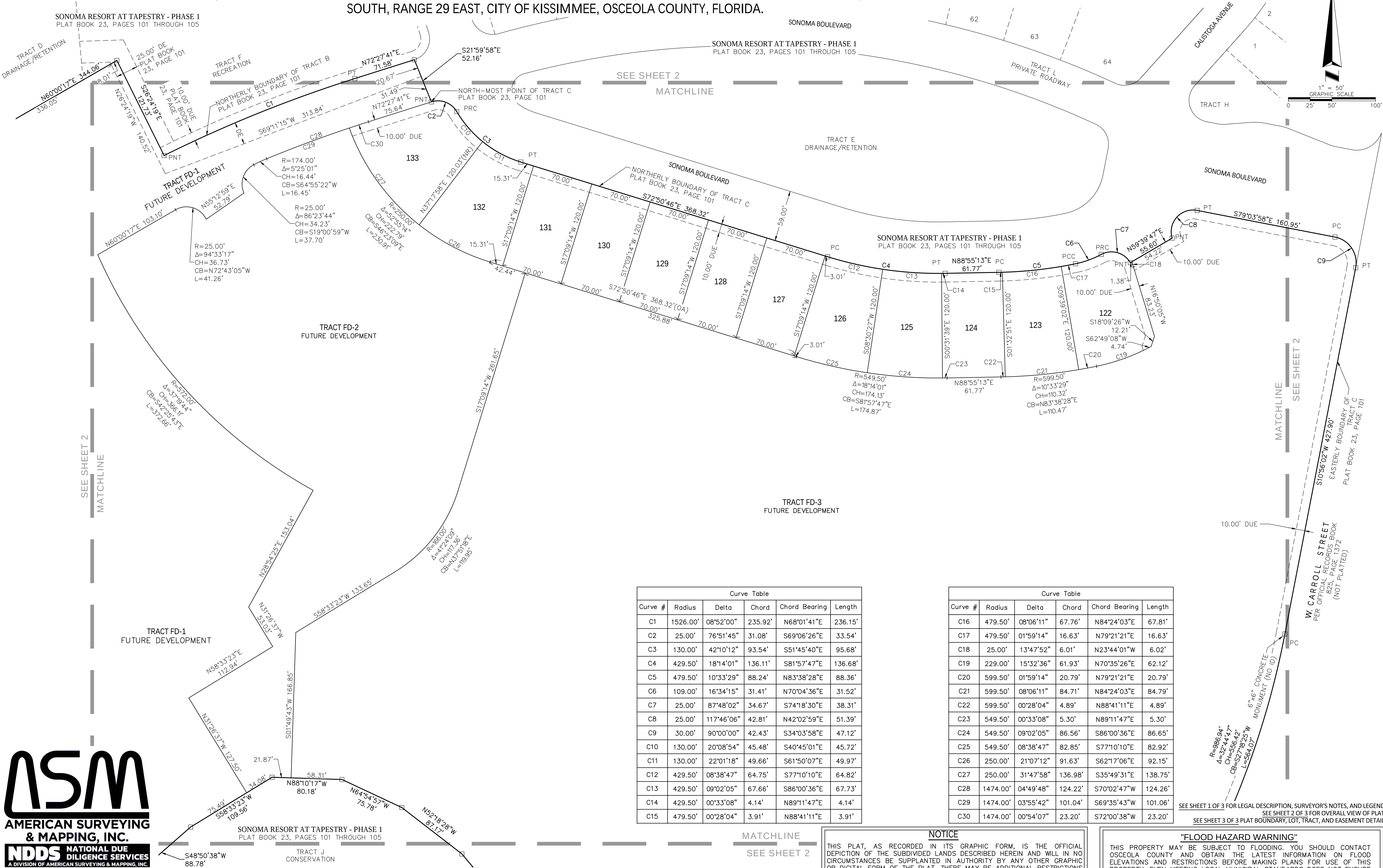
"FLOOD HAZARD WARNING"

THIS PROPERTY MAY BE SUBJECT TO FLOODING. YOU SHOULD CONTACT OSCEOLA COUNTY AND OBTAIN THE LATEST INFORMATION ON FLOOD ELEVATIONS AND RESTRICTIONS BEFORE MAKING PLANS FOR USE OF THIS PROPERTY. EVEN MEETING LOCAL MUNICIPAL STANDARDS DOES NOT ENSURE ANY IMPROVEMENTS SUCH AS STRUCTURES, DRIVEWAYS, YARDS, SANITARY SEWER SYSTEMS WILL NOT BE FLOODED IN CERTAIN RAIN EVENTS.

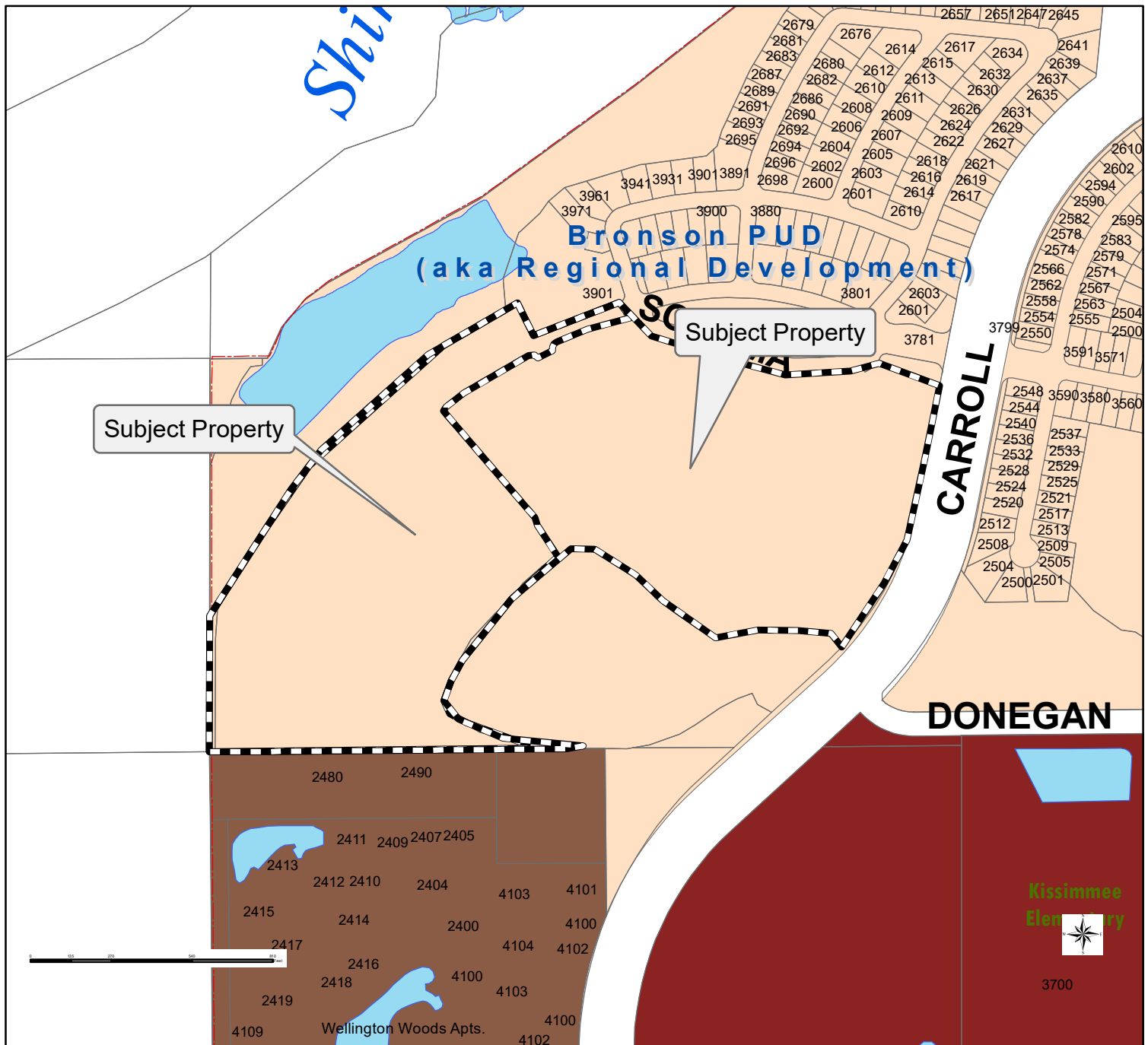
Curve Table					
Curve #	Radius	Delta	Chord	Chord Bearing	Length
C1	1526.00'	08°52'00"	235.92'	N68°01'41"E	236.15'
C2	25.00'	76°51'45"	31.08'	S69°06'26"E	33.54'
C3	130.00'	42°10'12"	93.54'	S51°45'40"E	95.68'
C4	429.50'	18°14'01"	136.11'	S81°57'47"E	136.68'
C5	479.50'	10°33'29"	88.24'	N83°38'28"E	88.36'
C6	109.00'	16°34'15"	31.41'	N70°04'36"E	31.52'
C7	25.00'	87°48'02"	34.67'	S74°18'30"E	38.31'
C8	25.00'	117°46'06"	42.81'	N42°02'59"E	51.39'
C9	30.00'	90°00'00"	42.43'	S34°03'58"E	47.12'

SONOMA RESORT AT TAPESTRY - PHASE 2A

A REPLAT OF TRACT B, TRACT C, AND A PORTION OF TRACT L PER THE PLAT OF SONOMA RESORT AT TAPESTRY - PHASE 1 AS RECORDED IN PLAT BOOK 23, PAGES 101 THROUGH 105 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SITUATED WITHIN SECTION 7, TOWNSHIP 25 SOUTH, RANGE 29 EAST, CITY OF KISSIMMEE, OSCEOLA COUNTY, FLORIDA.



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	Subject Property		RA-4 (Single Family Residential 6,000 sqft)		HC (Highway Commercial)
	CRA District Boundary		RB-1 (Medium Density Residential)		B-5 (Office Commercial)
	Railroad		RB-2 (Medium Density Residential - Office)		BP (Business Park)
	City Limit Boundary		RC-1 (Multiple Family Medium Density Residential)		IB (Industrial Business)
	Kissimmee Gateway Airport		RC-2 (Multiple Family High Density Residential)		AO (Airport Operations)
	Lake Surfaces		MH-1 (Mobile Home 9,000 sqft)		AI (Airport Industrial)
Zoning Districts			MH-2 (Mobile Home 6,000 sqft)		CF (Community Facility)
Zoning District Designations			MHP (Mobile Home Park)		HF (Hospital Facility)
	AC (Agricultural Conservation)		RPB (Residential Professional Business)		UT (Utilities)
	RE (Residential Estate)		B-1 (Downtown Commercial)		OS (Open Space)
	RA-1 (Single Family Residential 12,000 sqft)		B-2 (Neighborhood Commercial)		RPUD (Residential Planned Unit Development)
	RA-2 (Single Family Residential 9,000 sqft)		B-3 (General Commercial)		SRPUD (Short Term Rental Planned Unit Development)
	RA-3 (Single Family Residential 7,000 sqft)		B-4 (Main Street Commercial)		MUPUD (Mixed Use Planned Unit Development)