



MEETING AGENDA (REVISED)
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, JANUARY 17, 2023 AT 6:00 PM

1. MEETING CALLED TO ORDER

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A Presentation of the Kissimmee Festival of Lights Parade winners for 2022

3.B Employee of the Month for January

3.C Service Awards for October, November and December

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

4.A Public Hearing - Final Reading - An Ordinance amending the Zoning Map from City Planned Mixed Use Development (PMUD) to City Multiple Family Medium Density Residential (RC-1): Ivey Creek, ZMA-22-0006 - Proposed Ordinance 22-21

AN ORDINANCE AMENDING ORDINANCE NO. 3068 KNOWN AS THE CITY OF KISSIMMEE LAND DEVELOPMENT CODE, REZONING THE PROPERTY HEREINAFTER DESCRIBED, 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 from the December 20, 2022 meeting

7.B Purchase and installation of replacement Heating, Ventilation, and Air Conditioning (HVAC) systems for the Central Services Complex

7.C Purchase and installation of replacement Variable Air Volume systems for the City Hall Building

7.D Continuing Services Contract with Trane Commercial Systems for Heating, Ventilation, and Air conditioning (HVAC) services at City-owned Facilities

7.E Approval of Contract for Citywide Security and Fire System Monitoring Services

7.F Accept Tourist Development Council (TDC) Grants from Experience Kissimmee to assist with 2023 Kowtown Festival and Pridefest Kissimmee events

7.G Purchase and Installation of Boom Equipment from Everglades Equipment Group for the Stormwater Management Program

- 7.H Approval of Lease between Senator Victor M. Torres, Jr. and the City of Kissimmee for Office Space at City Hall
- 7.I Monument Sign Easement for First Loop Logistics Park
- 7.J 2021 African American Cultural and Historical Grant through the Florida Division of Historic Resources for improvements to the Chambers Park Community Center
- 7.K Interlocal Agreement with Osceola County and Tohopekaliga Water Authority Pertaining to the Acquisition of Retail Water, Wastewater, and Reclaimed Water Retail Services of the Sunbridge Stewardship District
- 7.L Purchase portable radios from Motorola Solutions, Inc.
- 7.M ESRI Small Municipal and County Government Enterprise Agreement
- 7.N In-House Professional Services Agreement with Kimley Horn & Associates to Alleviate Engineering Staffing Vacancies
- 7.O Award Construction Engineering & Inspection Services for the Harbin Parking Modification Project to DRMP, Inc.
- 7.P Task Work Order No. 1 to American Persian Engineering & Construction, LLC for the Construction of the Harbin Parking Modification Project
- 7.Q Execution of the Osceola Home Consortium Disbursement Agreement Between Osceola County and the City of Kissimmee for FY 2022-2023
- 7.R Approval to award bid RFP2023-002 for Concession Services at Fortune Road Athletic Complex and Bob Makinson Aquatic Center to Gulfstream Catering Inc
- 7.S Transfer of Gas Tax Funds from Reserves for Road Materials and Supplies
- 7.T Road Resurfacing Task Work Order #1 for Dyer Boulevard Phase I and Carrol Street Project to Asphalt Paving Systems
- 7.U Option Agreement Between The City of Kissimmee, Florida, Diamond Elite Kissimmee LLC and Diamond Elite Kissimmee Apartments LLC
- 7.V Authorization to transfer funds into an ongoing city-wide security project

8. DISCUSSION ITEMS

- 8.A Advisory Board Vacancies: Board of Adjustment and Planning Advisory Board

9. HEAR CITY OFFICIALS

- 9.A CITY MANAGER
- 9.B CITY ATTORNEY
- 9.C CITY COMMISSION

10. ADJOURNMENT

In accordance with Florida Statutes 286.105: Any person wishing to appeal any decision made by the City Commission with respect to any matter considered at such meeting or hearing will need to ensure that verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is made.

City Commission – January 17, 2023

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

Presentation of the Kissimmee Festival of Lights Parade winners for 2022

Request

Acknowledgement and distribution of awards to the 2022 Kissimmee Festival of Lights Parade winners.

Explanation

The City of Kissimmee celebrated its annual Kissimmee Festival of Lights Parade on Saturday December 10, 2022. This parade kicks off the holiday season and encourages positive economic flow to our valued downtown merchants. It provides festive and affordable entertainment to thousands of residents and visitors in beautiful downtown Kissimmee. The 65 entry procession led by the Grand Marshal, Ms. Taylor Kuwik, Osceola County School District Teacher of the Year, traveled through the historic streets of Downtown Kissimmee and concluded at the Monument of States.

Parade winners were selected by a panel of judges. The results are as follows:

<u>AWARD TITLE</u>	<u>WINNER</u>
Best Lights and Effects	Terry's Electric
Best Walking Group	Fierce Orlando
Best Overall	Kissimmee Utility Authority

Department: Parks & Recreation
Presenter: Matt Libby

Attachment(s):

None

ITEM 3.B

Employee of the Month for January

Request

That the City Commission join the City Manager in recognizing Maria Damas, as January's Employee of the Month.

Explanation

The City is honored to announce that the Employee of the Month for January is Maria Damas, Secretary, for the City Manager/City Clerk's Office. Maria has been with the City since 1994.

Maria is a valuable employee who is conscientious, knowledgeable, dependable, welcoming, and most of all, helpful. She is known as a go-to person as she readily shares her knowledge and skills to assist new and existing employees in understanding processes and procedures. She is described as a great team player - always willing to help everyone even though she has her own responsibilities and daily tasks. She routinely goes above and beyond providing great customer service to our citizens and City staff. Maria has been called the "Encyclopedia of the City", the go-to-go person when employees don't have an answer to our citizens.

Maria is a wonderful asset to our City and her dedication to our team hasn't gone unnoticed. Whether it's using her bilingual skills, assisting with the Emergency Operations Center, or sharing her knowledge of City history - for these and many other contributions, we would like to recognize her.

Department: Human Resources & Risk Management

Presenter: Mike Steigerwald

Attachment(s):

None

ITEM 3.C

Service Awards for October, November and December

Request

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

Explanation

Five	Darrius Benjamin	Police
	Tameara Crespo	City Manager
	Eric Diaz Reyes	Police
	Miguel Lanzo	Police
	Robert Masiku	Public Works & Eng.
Ten	Alfredo Mendez	Public Works & Eng.
	Rodolfo Sayeed	Police
	Ashely Cornelison	Development Services
	Gerry Garrett	Police
	Tony Kelber	Public Works & Eng.
Fifteen	Kenny King	Public Works & Eng.
	Matt Petrasko	Fire
	Cristina Rojas	Public Works & Eng.
	Brandon Brinegar	Public Works & Eng.
	Julio Colon	Public Works & Eng.
Twenty	Steve Lackey	Parks & Recreation
	Mary Ann Johnson	Public Works & Eng.
	Christopher Rodriguez	City Manager
Twenty Five	Michael Tilton	Police
Thirty Five	James Walls	Fire

Department: Human Resources & Risk Management

Presenter: Mike Steigerwald

Attachment(s):

None

ITEM 4.A

Public Hearing - Final Reading - An Ordinance amending the Zoning Map from City Planned Mixed Use Development (PMUD) to City Multiple Family Medium Density Residential (RC-1): Ivey Creek, ZMA-22-0006 - Proposed Ordinance 22-21

AN ORDINANCE AMENDING ORDINANCE NO. 3068 KNOWN AS THE CITY OF KISSIMMEE LAND DEVELOPMENT CODE, REZONING THE PROPERTY HEREINAFTER DESCRIBED, REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

Request

Recommendation of approval of a Zoning Map Amendment to change the City Zoning designation from Planned Mixed Use Development (PMUD) to Multiple Family Medium Density Residential (RC-1) on approximately 62 acres of land.

Explanation

Due to Hurricane Nicole and advertising requirements, this item was continued from the December 20, 2022 City Commission Meeting.

The property was annexed and rezoned into the City in 2006. The property utilized the City's Land Use Conversion table in Policy 1.1.10.5 in the Future Land Use Element of the Comprehensive Plan to establish a City Multi Family Medium Density Residential designation from the County Medium Density Residential. The Mixed Use Planned Unit Development (MUPUD) included 320 townhomes and 20 acres of commercial.

The proposed Multiple Family Medium Density Residential (RC-1) is compatible with the surrounding land uses. There is existing multi family northwest of the property and the vacant property within Lakeside Estates to the north includes multifamily and commercial as permitted uses (DRC#13-230). Improvements and conditions to mitigate impacts will be addressed with subsequent development review applications and reviews and are subject to applicable local, state, and federal permitting requirements and standards.

FINDINGS AND REASONS:

1. Compliance with the intent of the Multi Family Medium Density Residential (RC-1) zoning district as outlined in Section 14-4-4(E) of the Land Development Code.
2. Compliance with the allowable uses as outlined in Section 14-4-5, Table 4-1, is consistent and compatible with the surrounding area.
3. Compliance with Land Development Code Section 14-3-27, Zoning map and Land Development Code (LDC) amendments, in regards to the submittal and review procedures and criteria to support an amendment.
4. Compliance with Comprehensive Plan Future Land Use Policy 1.2.1.3 Medium Density Residential, in that the Multiple Family Medium Density Residential (MF-MDR) designation is compatible with the Multi Family Medium Density Residential (RC-1) Zoning designation.

Recommendation

The Development Review Committee (DRC) recommended approval on October 11, 2022.

The Planning Advisory Board (PAB) recommended approval by a vote of 3-0-1 on January 4, 2023.

REQUESTED CITY COMMISSION ACTION:

Approve

Adopt

Department: Development Services

Presenter: Brenda Ryan

Attachment(s):

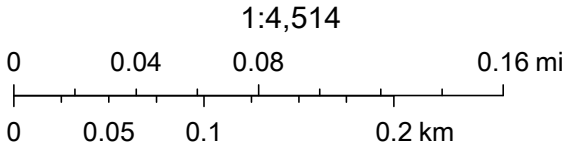
1. ZMA-22-0006 Aerial Map
2. ZMA-22-0006 Vicinity Map
3. ZMA-22-0006 Site Data Tables
4. (S) ZMA-22-0006 Ivey Creek - Proposed Ord 22-21
5. ZMA-22-0006 City Commission Ad
6. ZMA-22-0006 Jan. 4, 2023 PAB Action Summary
7. ZMA-22-0006 DRC Comments

ZMA-22-0006 Aerial Map

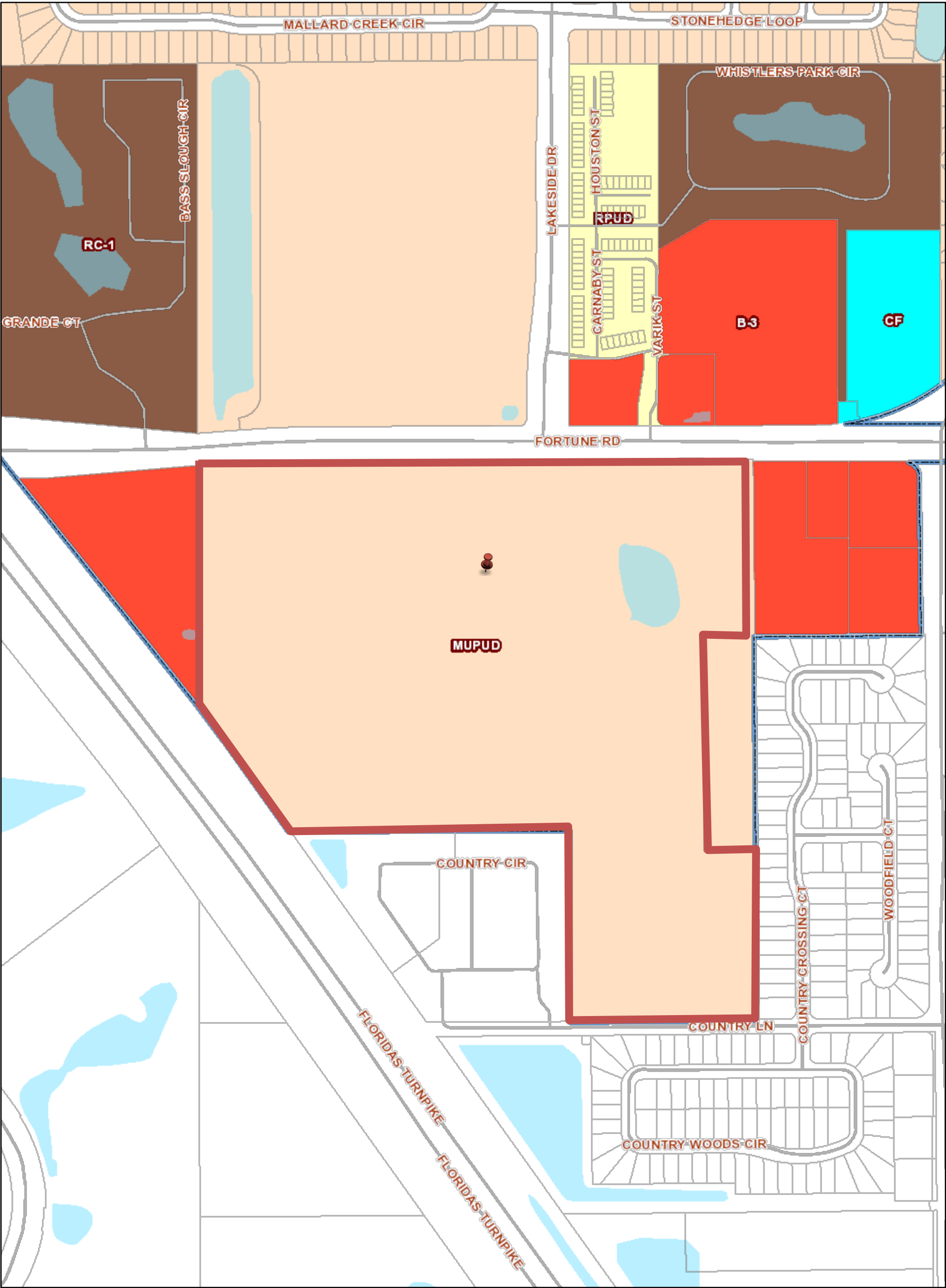


12/2/2022, 4:19:58 PM

-  City Limits
-  Road Centerlines
-  Parcels



ZMA-22-0006 Vicinity Map



12/2/2022, 4:32:17 PM

- City Limits

Road Centerlines

Parcels

County

AC (Agricultural Conservation)

AI (Airport Industrial)

AO (Airport Operations)

B-2 (Neighborhood Commercial)

B-3 (General Commercial)

B-5 (Office Commercial)

BP (Business Park)

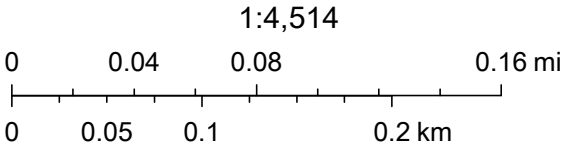
CF (Community Facility)

HC (Highway Commercial)

IB (Industrial Business)

MH (Mobile Home 6,000 sqft)

MHP (Mobile Home Park)



Ivey Creek Zoning Map Amendment, ZMA-22-0006
Parcel ID#19-25-30-00U0-0050-0000
South of Fortune Road, east of Florida's Turnpike, west of Simpson Rd
Site Data Tables

Site Data	
Size	62.49 acres
Future Land Use Designation	Multi Family Medium Density Residential (MF-MDR) – City
Proposed Future Land Use Designation	N/A
Zoning District Designation	Mixed Use Planned Unit Development (MUPUD) – City
Proposed Zoning District Designation	Multi-Family Medium Density Residential (RC-1) - City
Existing Overlay District	N/A
Existing Use(s)	Vacant
Proposed Use(s)	Residential
Adjacent Land Use	
North	Commercial General (CG) & Multiple Family Medium Density Residential (MF-MDR) – City
South	Community Center – County
East	Commercial General (CG) – City Community Center– County
West	Commercial General (CG) – Florida's Turnpike
Adjacent Zoning	
North	Mixed Use Planned Unit Development (MUPUD), Residential Planned Unit Development (RPUD), General Commercial (B-3) - City
South	Multi- Family (RM-2), Multi-Family (RM-1) (Preceding Zoning Districts) - County
East	General Commercial (B-3) - City Multi-Family (RM-1) (Preceding Zoning District) - County
West	General Commercial (B-3) - City Florida's Turnpike
Past/Current Project Tracking	06-065 Annexation (w/Land Use Conversion from County MDR to City MF-MDR) 06-097 PUD Rezoning

Comprehensive Plan Summary
Policy 1.2.1.3, Medium Density Residential (MDR): The medium density designation is intended to ensure sufficient land area for developments of medium density, and an adequate supply of existing and/or projected public

facilities for the area. Supportive community facilities and accessory land uses may be located within areas designated MDR.

The Multiple Family Medium Density Residential (MF-MDR) designation is intended to accommodate multiple family structures with a density of 10-20 units per acre. Lesser densities may be allowed in order to protect environmentally sensitive lands or to achieve greater consistency with surrounding land uses, including mixed-uses.

Potential Zoning Districts	Multiple Family Medium Density Residential Districts - RC-1 and RC-2
	Agriculture and Conservation District - AC
	Residential Planned Unit Development District - RPUD
	Short-Term Rental Planned Unit Development - SRPUD
	Mixed-Use Planned Unit Development District - MUPUD

Zoning District Standards District Summary

Land Development Code Section 14-4-4(E), Multiple Family Medium Density Residential District) Intent: This district is primarily intended to accommodate multiple family developments. The RC-1 district is envisioned for locations where medium density housing already exists and other places appropriate for such development. Frequently the locations serve as a transition between residential neighborhoods and non-residential development.

This district is intended for use in areas which have been assigned a Multiple Family Medium Density Residential (MF-MDR) or a Multiple Family High Density Residential (MF-HDR) future land use designation by the comprehensive plan. The RC-2 district is envisioned for areas that are adjacent to development with compatible intensity levels, arterial or collector roads, and have the requisite utilities. These areas should generally be highly accessible to commercial services. The RC-2 district is intended for use in areas which have been assigned a Multiple Family High Density Residential (MF-HDR) future land use designation. Future development proposals within these districts should provide for a smooth transition in residential density, preserve stability of established residential neighborhoods, and include sufficient open space, parking, and landscaping to reinforce objectives for quality living areas.

Comprehensive Plan Future Land Use & Zoning Comparisons

	<i>Existing Future Land Use & Zoning</i>	<i>Requested Future Land Use & Zoning</i>
Uses	MF-MDR (10-20 du/ac)	MF-MDR (10-20 du/ac)
	MUPUD City Zoning	RC-1 City Zoning
	Vacant	Multi-Family Residential

Public Facilities Analysis	
Transportation	
Adjacent street	Fortune Rd. & Country Ln.
Street Quality of Service (QOS)	Adjacent Street is under Osceola County jurisdiction.
Sanitary Sewer	
Is volume less than 98% capacity?	N/A – Compliance
Potable Water	
Is volume less than 98% capacity?	N/A – Compliance
Is water pressure at least 40lbs per square inch?	N/A – Compliance
Solid Waste	
Is volume less than 5.1lbs per person per calendar day?	N/A – Compliance
Recreation	
Is active recreation area at least 2 acres per 1,000 population?	N/A – Compliance
Is urban open space area at least 2 acres per 1,000 population?	N/A – Compliance
Is total recreation area at least 4 acres per 1,000 population?	N/A – Compliance
Drainage	
Is off-site discharge; runoff velocities; roadway drainage; pavement; retention; and flood storage LOS standards met?	N/A- Compliance

PROPOSED ORDINANCE NO. 22-21
ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 3068
KNOWN AS THE CITY OF KISSIMMEE LAND
DEVELOPMENT CODE, REZONING THE PROPERTY
HEREINAFTER DESCRIBED, REPEALING ALL
ORDINANCES IN CONFLICT HERewith AND PROVIDING
AN EFFECTIVE DATE.**

BE IT ORDAINED BY THE CITY COMMISSION THAT ORDINANCE NO. 3068 KNOWN AS THE CITY OF KISSIMMEE LAND DEVELOPMENT CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

SECTION 1. Ordinance No. 3068, known as the City of Kissimmee Land Development Code, is hereby amended so as to rezone the following described property to-wit:

FROM: MUPUD (Planned Mixed Use Development) – City

TO: RC-1 (Multiple Family Medium Density Residential) – City

The subject property is located at: Parcel ID: 19-25-30-00U0-0050-0000

Legal Description:

N 1/2 OF NW 1/4 & NW 1/4 OF SE 1/4 OF NW 1/4 LESS SE 1/4 OF NE 1/4 OF NW 1/4 & LESS RD R/W & LESS R/W SUNSHINE ST PKWY & LESS RD R/W & LESS COM AT N 1/4 COR, S 669.97 FT, W 65 FT TO PT ON N/L COUNTRY CROSSING UNIT 3 PB 7 PG 32-33 & POB; CONT W 587.34 FT TO NW COR COUNTRY CROSSING UNIT 3, N 619.95 FT TO S R/W BOGGY CREEK RD, E 42.42 FT, S 10 FT, E 494.73 FT TO POC, CURVE RIGHT, RAD 50 FT, CENT ANG 89 DEG, SELY ALONG CURVE 78.05 FT, S 555.25 FT TO POB & LESS BEG AT SW COR OF LOT 2, OWEN REPLAT PB 17 PG 173, N00-17-02W 615.52 FT TO PT ON S/L OF PARCEL 103 ADDL R/W TAKING PER OR 5910/941, N89-45-58W 30 FT, S00-16-51E 614.18 FT, S89-43-09W 154 FT, S00-16-51E 754 FT, N89-43-09E 183.99 FT TO PT ON W/L OF COUNTRY CROSSING UNIT 3 PB 7 PGS 32-33, N00-16-40W 752.39 FT TO POB

A map of the area is included with this ordinance.

SECTION 2. Upon the effective date of this ordinance, the City Manager shall promptly cause the rezoning as provided in Section 1 herein to be entered onto the official zoning map of the City of Kissimmee.

SECTION 3. Except as hereby amended said City of Kissimmee Land Development Code Ordinance No. 3068 as heretofore amended shall remain in full force and effect.

SECTION 4. This Ordinance shall take effect 10 days after its passage.

BE IT ORDAINED, by the City Commission of the City of Kissimmee, this **17th** day of **January**, 20**23**.

Mayor - Commissioner

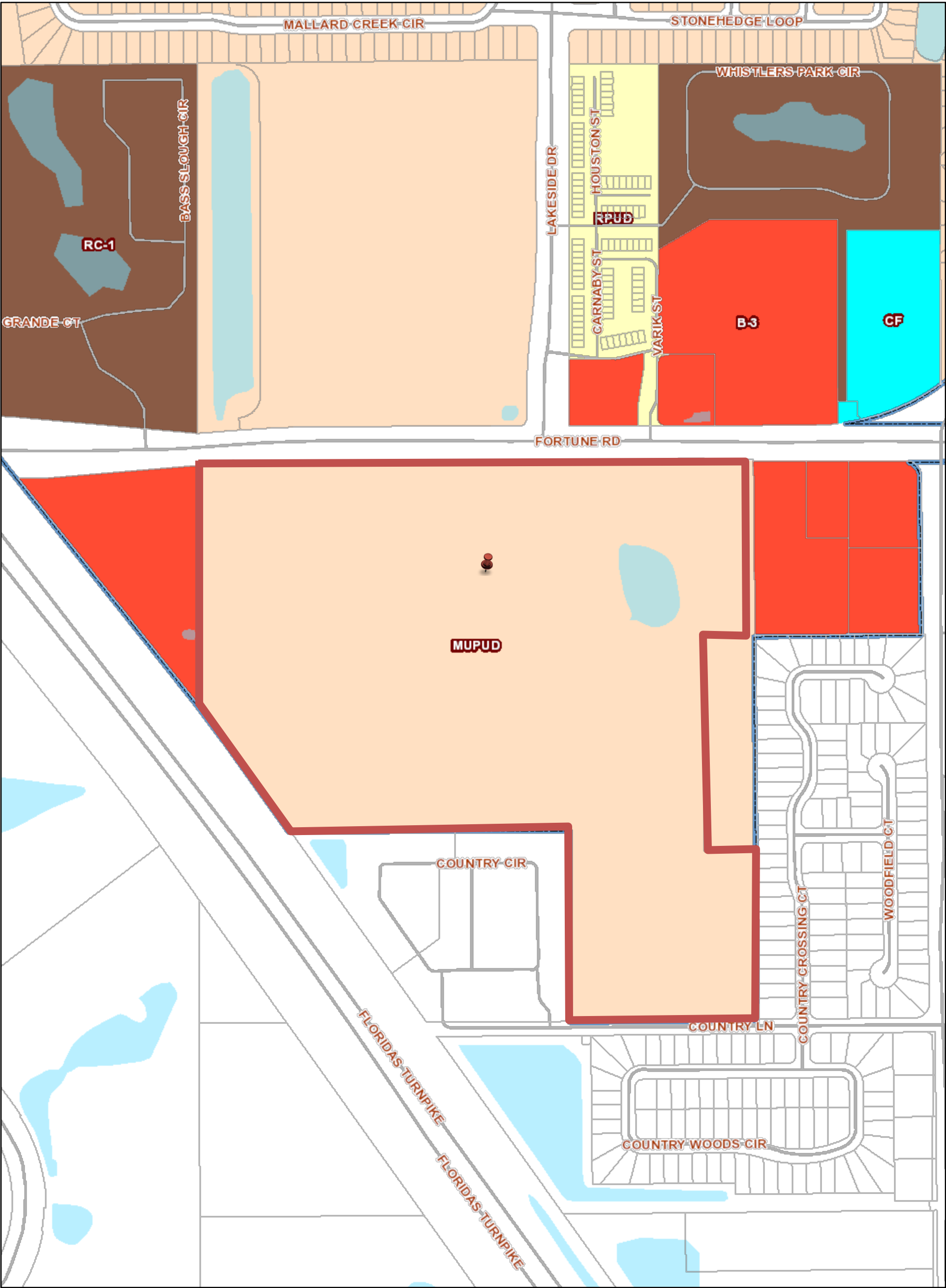
ATTEST:

City Clerk

Approved as to form and legality:

City Attorney

ZMA-22-0006 Vicinity Map



12/2/2022, 4:32:17 PM

- City Limits

Road Centerlines

Parcels

County

Zoning Districts

AC (Agricultural Conservation)

AI (Airport Industrial)

AO (Airport Operations)

B-2 (Neighborhood Commercial)

B-3 (General Commercial)

B-5 (Office Commercial)

BP (Business Park)

CF (Community Facility)

HC (Highway Commercial)

HF (Hospital Facility)

IB (Industrial Business)

MH (Mobile Home 6,000 sqft)

MHP (Mobile Home Park)
- 1:4,514

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- Web AppBuilder for ArcGIS

Page 16 of 696

Ad Number: 7340055-1
 Insertion Number:
 Size: 3 x 10.5000
 Color Type: B&W

Client Name:
 Advertiser:
 Section/Page/Zone: Main News/B011/FLA
 Description:

City of Kissimmee Planning Services
 ZMA-22-0006 IVEY CREEK REZONING

Publication Date: 12/08/2022

This E-Sheet(R) is provided as conclusive evidence that the ad appeared in The Orlando Sentinel on the date and page indicated. You may not create derivative works, or in any way exploit or repurpose any content.

Jumble

Unscramble these letters to form four ordinary words.

DUTOO
 MTYUM
 TARGEH
 OYNENA



Arrange circled letters to form answer, as suggested by cartoon.

Answer:

Goren on Bridge

Both vulnerable, East deals

NORTH
 ♠ Q 4 2
 ♥ Q 5 3
 ♦ 8 5
 ♣ A 10 4

WEST
 ♠ J 6
 ♥ 10 7 2
 ♦ 7 5 2
 ♣ Q J 9 8 3

EAST
 ♠ K 10 9 7 3
 ♥ K 9 4 3
 ♦ K 2
 ♣ A 5
 ♥ A 1 9 4
 ♦ A Q J 10
 ♣ 7 6 5

The bidding:
EAST 1♠ **SOUTH** 1♥ **WEST** 2♠ **NORTH** 2♠
 1♠ INT Pass 2♠ Pass
 Pass 2♥ Pass 3♥ Pass
 Opening lead: Queen of ♠

Most good players holding the South hand, we believe, would have chosen a takeout double rather than a one-no-trump overcall at their first turn. Length in the opponent's suit is usually the key to that decision.

South won the opening club lead with dummy's ace. Both the red-suit kings were surely with East

Sudoku Puzzle

Complete the grid so that every row, column and 3x3 box contains every digit from 1 to 9 exclusively.

Level 1

7	1				3			
4	8		2					
					6			
5	1	8	7		2	3		
	2	3						
3	5			6	8	7		
8			9		4			

With Bob Jones

for his opening bid, but there were not nearly enough entries to take the needed finesse. The first step was to tackle the trump suit, and South decided that East had to have a doubleton king for there to be any chance. Accordingly, he led a heart to his jack at trick two and followed by cashing the ace of hearts. Good news!

South led his nine of hearts to dummy's queen, drawing the last trump, and led a diamond to his queen. Decision time! Ace of diamonds and a diamond ruff would make the contract if East started with two or three diamonds, but what if he had four? If he started with four diamonds, to go with his two hearts and presumed five spades, then he only had one club remaining. The opening lead suggested that East had a singleton king of clubs at this point.

South saw a solution. He led his four of hearts to dummy's six and then repeated the diamond finesse. He cashed the ace of diamonds, hoping for the king to drop. When it didn't, South continued with his last diamond to East's king. East could cash his high club, but then had to lead away from his king of spades and the contract rolled home. Nicely done!

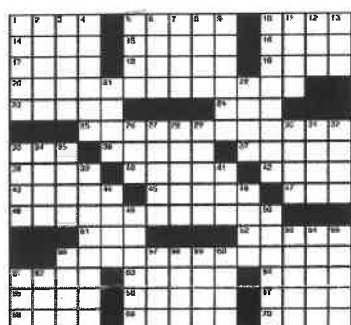
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Crossword

ACROSS

- 1 Courteous title
- 2 Unaccompanied
- 3 Sphere of influence
- 4 Cocktail typically garnished with
- 5 Fragrance
- 6 Fairy-tale antagonist
- 7 Expanding Asian desert
- 8 Temporarily unavailable
- 9 Work hard for
- 10 Band saw
- 11 Tuned to, as a radio dial
- 12 Genetic material in some vaccines
- 13 Circular saw?
- 14 Trail behind
- 15 Photographer
- 16 Incline
- 17 Concerning
- 18 Zenith's opposite
- 19 Place to build
- 20 Back up an apology, say
- 21 Pampering treatments for feet, informally
- 22 Sad
- 23 Power saw?
- 24 Spot for a sleeve tattoo
- 25 Abates
- 26 Coping saw?
- 27 Styish
- 28 City south of Gainesville
- 29 Image in the Timberland logo
- 30 Prolific
- 31 More up-to-date
- 32 Allow to borrow
- 33 "Cheers" bartender
- 34 Accounting giant
- 35 & Young
- 36 Finishes

- 21 Inhabitants of a classroom
- 22 "I am"
- 23 Travel guide listing
- 24 Round closers on a onesie
- 25 Not as narrow
- 26 Former North Dakota senator
- 27 Helikamp
- 28 Long part of a cornet
- 29 Very much a fan of
- 30 Words of
- 31 Incantation
- 32 Carnassies for "The Hunger Games"
- 33 "Zounds!"
- 34 Make a blunder
- 35 Chaps
- 36 James who sang "At Last"
- 37 Made better
- 38 Inhabitants of a classroom
- 39 "I am"
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- 48 Incantation
- 49 Carnassies for "The Hunger Games"
- 50 "Zounds!"
- 51 Make a blunder
- 52 Chaps
- 53 James who sang "At Last"
- 54 Made better



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Daily Word Game

Impassive (im-PAS-iv): Apathetic; giving no sign of emotion.

Find: 28 words in IMPASSIVE.

Averages: 21 words. Time: 35 minutes.

Rules: 1. Words must be four or more letters. 2. No four-letter plural words such as "bats" or "dies".

3. Use only one form of a verb. For example, either "pose" or "posed". 4. No proper nouns or slang words.

MT. PLEASANT



BY RICK MCKEE & KENT SLIGH



DOONESBURY

BY GARRY TRUDEAU



CITY OF KISSIMMEE NOTICE OF PUBLIC HEARING

The City Commission will consider a request to amend the Official Zoning Map referenced in Ordinance No. 3068 known as the Land Development Code of the City of Kissimmee rezoning the property hereinafter described as follows:

FROM: MUPOD - (Planned Mixed Use Development) - City

TO: RD-1 - (Multiple Family Medium Density Residential) - City

The subject property is located at Parcel ID: 19-25-30-0000-0050-0000

Legal Description:

N 1/2 OF NW 1/4 & NW 1/4 OF SE 1/4 OF NW 1/4 LESS SE 1/4 OF NE 1/4 OF NW 1/4 & LESS RD R/W & LESS R/W SUNSHINE ST PKWY & LESS RD R/W & LESS COM AT N 1/4 COR, S 869.97 FT, W 65 FT TO PT ON NW 1/4, COUNTRY CROSSING UNIT 3 PB 7 PG 32-33 & POB; CONT W 587.34 FT TO NW COR COUNTRY CROSSING UNIT 3, N 619.95 FT TO S R/W BOGGY CREEK RD, E 42.42 FT, S 10 FT, E 494.73 FT TO POB, CURVE RIGHT, RAD 50 FT, CENT ANG 89 DEG, SELY ALONG CURVE 78.05 FT, S 555.25 FT TO POB & LESS BEG AT SW COR OF LOT 2, OWEN REPLIT PB 17 PG 173, N00-17-02W E15.52 FT TO PT ON S/L OF PARCEL 103 ADDL R/W TAKING PER OR 58101041, N00-45-S0W 30 FT, S00-16-51E 614.19 FT, S03-43-99W 154 FT, S00-16-51E 754 FT, N00-43-09E 183.09 FT TO PT ON W/L OF COUNTRY CROSSING UNIT 3 PB 7 PGS 32-33, N00-16-40W 752.39 FT TO POB

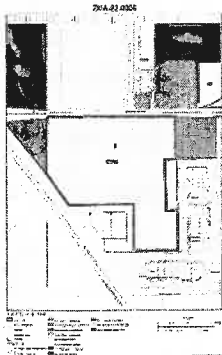
PROPOSED ORDINANCE #22-21: AN ORDINANCE AMENDING ORDINANCE NO. 3068 KNOWN AS THE CITY OF KISSIMMEE LAND DEVELOPMENT CODE, REZONING THE PROPERTY HEREINAFTER DESCRIBED, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

The City Commission will hold a Public Hearing on Tuesday, December 20, 2022 at 6:00 p.m. in the Commission Chambers of City Hall, 101 Church Street, Kissimmee, FL, and will consider the adoption of an Ordinance to rezone the above described property following the public hearing.

Any interested party wanting to be heard on this issue may submit testimony to be read into the official record to CityClerk@kissimmee.gov prior to the start of the meeting or may be heard by participating in person. Any questions may be directed to the Development Services Department at (407) 519-2140 or planning@kissimmee.gov.

Reference # ZMA-22-0006
 Ivey Creek Rezoning

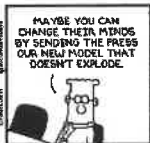
CITY COMMISSION
 KISSIMMEE, FLORIDA



In accordance with Florida Statutes 286.26, persons needing assistance to participate in any of these proceedings should contact the Office of the City Clerk (407) 519-2308 prior to the meeting. (FS286.26)

In accordance with Florida Statutes 286.0105, Any person wishing to appeal any decision made by the Planning Advisory Board 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 proceeding is made, which record includes the testimony and evidence upon which the appeal is made.

DILBERT



BY SCOTT ADAMS



Ticked off! @three flat tires

I'm ticked off at SunPass, who, when introducing the SunPass Pro inadvertently programmed the SunPass Mini to charge for tolls in other states. In the meantime, I had to de-activate my account, and when I returned to Florida I called to re-activate my SunPass and they failed to do so, resulting in higher pay by plate tolls for the all too many Florida tolls as is. Now their poor customer service is making me jump through hoops to get a refund by providing them with toll information they already have!

I'm ticked off that I didn't buy stock in the company that makes crime scene tape. To the person that is ticked off at Publix for price gouging, well, I just spent \$84 at Publix today, and between the buy-one-

get-one-free, and other specials, I saved \$20.81. Try saving that much elsewhere. You don't because Florida's biggest grocery chain by gouging your customers. I'm ticked off that the NCAA, in order to appease the major college football powers, is proposing an expansion to a 12-team playoff series. Won't that annoy the teams at 13th, 14th and 15th places, causing the playoffs to be expanded again?

I am ticked off that in the past three weeks, one of my tires, my husband's tire, and one of my son's tires has gone flat because of a nail and could not be plugged but had to be replaced because of where the nails were. It would be nice if workers working with nails were much more careful about properly storing them or picking up after themselves!

Companies that use children to sell their products engage in the worst form of abuse.

The flip side

Thanks to the staff, volunteers and sponsors of Honor Flight, that flies veterans for a day in Washington, D.C., in recognition of their military service. I went Oct. 29 and had the time of my life. It mitigates the contempt for military after Vietnam.

Need to vent?

I'm Ticked Off! Are you? Write to tickedoff@orlando-sentinel.com or flipside@orlando-sentinel.com. Stay Ticked Off! at OrlandoSentinel.com/tickedoff.



Jumble

Jumbled words: outdo, tummy, gather, anyone

Answer: The bullfighter welcomed people to his home at his — "MAT-A-DOOR"

9	7	8	1	4	8	5	3	2
3	4	8	8	5	2	1	7	9
2	5	1	9	7	3	4	6	8
8	8	3	2	9	5	7	1	4
5	1	4	8	8	7	9	2	3
7	9	2	3	1	4	8	5	6
1	2	7	4	8	6	3	9	5
4	3	9	5	2	1	6	8	7
6	8	5	7	9	2	4	1	

Daily Word Game

IMPASSIVE: impassive, ivies, mass, massive, mesa, mess, miss, missive, pass, passe, passive, pave, pmiss, amiss, apse, apsis, same, save, seam, semi, sepi, spam, spasm, spies, vamp, vase, visa, vise



MEETING ACTIONS
SESSION OF THE PLANNING ADVISORY BOARD
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
WEDNESDAY, JANUARY 4, 2023 AT 6:00 PM

Board Members Present: Chairman Robert Bussiere, Vice Chairman Diana Marrero-Pinto, Member Robert Spalding, Member Jeffrey Wolff, **(Absent)**, Member Jackie Espinosa, **(Absent)**, Member Fatima Santiago, Member Melissa Thacker, School Board Member Jason Lindsey **(Absent)**

Staff Members Present: Brenda Ryan, Planning Manager, Patricia Prevost, Planner I, Kalanit Oded, Deputy City Attorney, Yolanda Hazley, Planning Technician

1. **MEETING CALLED TO ORDER**
2. **MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**
3. **MINUTES**

- 3.A Approval of the November 2, 2022 Planning Advisory Board Meeting Minutes.

ACTION: Member Thacker made a motion to approve the minutes of the November 2, 2022 Planning Advisory Board meeting. Seconded by Member Santiago.

Chairman Bussiere	AYE	Member Thacker	AYE
Vice Chairman Marrero- Pinto	AYE		
Member Santiago	AYE		

MOTION CARRIED 4-0

4. **OLD BUSINESS**
5. **NEW BUSINESS**

- 5.A Public Hearing for a Conditional Use with Site Specific Redevelopment Plan to establish a child care facility at 820 Emmett Street - CU-22-0011

ACTION: Member Thacker made a motion to approve. Seconded by Member Marrero.

Chairman Bussiere	AYE	Member Thacker	AYE
Vice Chairman Marrero- Pinto	AYE		
Member Santiago	AYE		

MOTION CARRIED 4-0

- 5.B Public Hearing for a Conditional Use with Site Specific Redevelopment Plan to establish an office conversion at 721 Mabbette Street - DRC-21-00055

ACTION: Vice Chairman Marrero-Pinto made a motion to approve. Seconded by Member Santiago.

Chairman Bussiere	AYE	Member Thacker	AYE
--------------------------	------------	-----------------------	------------

Vice Chairman Marrero- Pinto AYE
Member Santiago AYE

MOTION CARRIED 4-0

- 5.C Public Hearing for a Conditional Use with Site Specific Redevelopment Plan to establish a 30 unit multi-family residential development at 511 Dillingham Avenue - CU-22-0010

ACTION: Member Thacker made a motion to approve. Seconded by Vice Chairman Marrero-Pinto.

Chairman Bussiere AYE Member Thacker AYE
Vice Chairman Marrero- Pinto AYE
Member Santiago AYE

MOTION CARRIED 4-0

- 5.D Public Hearing - Ordinance amending the Zoning Map from City Planned Mixed Use Development (PMUD) to City Multiple Family Medium Density Residential (RC-1): Ivey Creek, ZMA-22-0006 - Proposed Ordinance #22-21

ACTION: Chairman Bussiere made a motion to approve. Seconded by Member Santiago

Chairman Bussiere AYE Member Thacker ABSTAIN
Vice Chairman Marrero- Pinto AYE
Member Santiago AYE

MOTION CARRIED 3-0-1

AN ORDINANCE AMENDING ORDINANCE NO. 3068 KNOWN AS THE CITY OF KISSIMMEE LAND DEVELOPMENT CODE, REZONING THE PROPERTY HEREINAFTER DESCRIBED, REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

6. PUBLIC HEARINGS

7. DISCUSSION

- 7.A Board Member Meeting Attendance

Planner Ryan discussed the importance of attendance with the Board Members

8. HEAR CHAIRMAN AND BOARD MEMBERS

9. ADJOURNMENT- 6:29pm



THE FOLLOWING SHALL BE USED AS AN ADDENDUM TO ANY PLAN, FILE, OR OTHER DOCUMENT REVIEWED IN ENERGОВ & BLUEBEAM

ADDRESS: 2220 Fortune Road (Ivey Creek MUPUD Rezoning)
PLAN NUMBER: ZMA-22-0006

DATE: 10/8/2022

Review Status:
APPROVED WITH CONDITIONS.

PLANNING - Brenda Ryan - 407.518.2104 - Brenda.Ryan@kissimmee.gov

1. The current Ivey Creek Mixed Use Planned Unit Development (MUPUD)(DRC#06-097) approved 320 townhomes and 20 acres of commercial uses.
2. Confirm whether this rezoning request is to RC-1 or RC-2.
 - a) The RC-1 Zoning district is intended and compatible with the current Multiple Family Medium Density Residential (MF-MDR)(10-20 du/ac) Future Land Use designation. If this rezoning request is confirmed to be the RC-1 Zoning, this application can move forward, subject to Planning Advisory Board and City Commission approval. LDC 14-4-4E
 - b) If this rezoning request is confirmed to be the RC-2 Zoning, this application cannot move forward as RC-2 Zoning is only compatible and intended with the Multiple Family High Density Residential (MF-HDR)(21-25 du/ac) Future Land Use designation. Planning staff meeting is recommended to discuss density and compatibility concerns of a MF-HDR Land Use Amendment within the surrounding area that is currently primarily MF-MDR and Commercial. A Large Scale Comprehensive Plan Amendment application would be needed with a rezoning to RC-2. LDC 14-4-4E

If you have any questions regarding the comments/conditions above, please use the contact information provided.

Please login to the Citizen Self Service portal at www.kissimmee.gov.energov to upload a response to comments.

Additional comments may be forth coming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation. When submitting, please provide a response to comments outlining where and how the comments have been addressed.

ITEM 7.A**Approval of City Commission Minutes from the December 20, 2022 meeting****Request**

Approval of the December 20, 2022 City Commission Meeting minutes.

Explanation**Recommendation**

Staff recommends approval of the December 20, 2022 minutes.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Commission

Presenter: Mike Steigerwald

Attachment(s):

1. (S) December 20, 2022, City Commission Minutes



**MEETING MINUTES
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, DECEMBER 20, 2022 AT 6:00 PM**

1. MEETING CALLED TO ORDER

Members Present: Mayor Olga Gonzalez, Commissioners Olga Castano, Angela Eady, Carlos Alvarez, III, Janette Martinez

Staff Present: City Attorney Olga Sanchez de Fuentes, Deputy City Manager Desiree Matthews, Assistant City Manager Austin Blake, City Clerk Linda Hansell

Members Absent: City Manager Mike Steigerwald

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 Alvarez led the audience in the Pledge of Allegiance.

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

None.

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

- 4.A Public Hearing - Final Reading - An Ordinance amending the Zoning Map from City Planned Mixed Use Development (PMUD) to City Multiple Family Medium Density Residential (RC-1): Ivey Creek, ZMA-22-0006 - Proposed Ordinance 22-21

AN ORDINANCE AMENDING ORDINANCE NO. 3068 KNOWN AS THE CITY OF KISSIMMEE LAND DEVELOPMENT CODE, REZONING THE PROPERTY HEREINAFTER DESCRIBED, REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

DUE TO HURRICANE NICOLE AND ADVERTISING/NOTICE REQUIREMENTS, THIS ITEM IS CONTINUED TO THE JANUARY 17, 2023 CITY COMMISSION MEETING

City Attorney Sanchez de Fuentes read Proposed Ordinance # 22-21 by title and announced that the Public Hearing would be continued to the January 17, 2023 meeting due to Hurricane Nicole.

Mayor Gonzalez announced the Public Hearing with no response from the audience.

Commissioner Eady moved to approve the continuance. Commissioner Castano seconded the motion.

Motion carried 5 - 0.

5. PUBLIC HEARINGS

- 5.A Resolution Approving an Inventory List of Municipally Owned Property
Approval of a Resolution adopting an inventory list of municipally owned property that is appropriate for use as affordable housing.

Frances DeJesus, Development Services presented the inventory list of properties attached to the agenda, and requested the Ernest Street property be removed from the Resolution language.

Mayor Gonzalez announced the Public Hearing with no response from the audience.

Commissioner Eady made a motion to adopt Resolution #29-2022 with the proposed change. Commissioner Castano seconded the motion.

Motion carried 5 - 0.

5.B Program Year 2021-2022 Community Development Block Grant Consolidated Annual Performance and Evaluation Report

Approval of the Program Year 2021-2022 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).

Frances DeJesus, Development Services discussed the CAPER and funds received by the City for CDBG. She reviewed the accomplishments for FY 2021-2022 as listed on the agenda. No comments were received.

Mayor Gonzalez announced the Public Hearing with no response from the audience.

Commissioner Eady moved to approve the 2021-2022 Program Year CDBG Consolidated Annual Performance and Evaluation Report. Commissioner Castano seconded the motion.

Motion carried 5 - 0.

6. HEAR AUDIENCE

None.

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.

City Attorney Sanchez de Fuentes announced item 7.O would be pulled from the Consent Agenda and placed on a future agenda.

Commissioner Alvarez made a motion to approve the Consent Agenda in it's entirety minus item 7.O. Commissioner Castano seconded the motion.

Motion carried 5 – 0

7.A Approval of City Commission Minutes from the December 6, 2022 meeting

Request Commission approval of the December 6, 2022 Commission Minutes.

7.B Design Services Agreement with The Lunz Group for the City of Kissimmee Fire Station No. 15 Project

Approval of the design services agreement with The Lunz Group for the City of Kissimmee Fire Station No.15 project in the amount of \$788,129.80. The funds are budgeted and available in the Sales Tax Fund.

7.C Approval of Participation in Law Enforcement Support Office Program

The Police Department (KPD) requests the Commission to authorize KPD to participate in the Law Enforcement Support Office Program (LESO) Program and for the Commission to authorize the Chief of Police to sign and execute the State Plan of Operation (SPO) between the State of Florida and KPD for participation in the LESO Program and the SPO Addendum.

7.D Approval to purchase Rescue Boats from Coastal Rescue Solutions

Fire Department requests permission to purchase a 2 boat/trailer package from Coastal Rescue Solutions.

7.E Approval of the Agreement to select the Training Platform from NEOGOV

Commission approval of the Training Platform Agreement with NEOGOV.

7.F Community Development Block Grant (CDBG) FY 2022 Funding Agreement and related subrecipient agreements for different programs - Dream Builders Summer Camp; Homeless Outreach and Navigation Program; Building Strong Families Continuing Education Program; and CHORE Program.

Acceptance of the CDBG FY 2022-2023 allocation from the Department of Housing and Urban Development (HUD) in the amount of \$732,540, approval to execute the funding agreement and the attached CDBG subrecipient agreements. Any subsequent agreements shall be executed according to the levels of signature authority consistent with the City's Procurement Policy.

7.G JDC Shop Parcel - Final Plat (DRC# SR-22-0003)

Approval of the final plat known as JDC Shop Parcel.

7.H First Amendment to Economic Development Incentive Agreement - FL Coach Inc.

Approval of Florida Coach Inc. Economic Development Incentive Agreement Amendment.

7.I 2022 Affordable Housing Advisory Committee (AHAC) Incentives Strategies Report - Review of Affordable Housing Incentive Strategies and Recommendations

Accept the 2022 AHAC Incentive Strategies Report

7.J HOME Program Agreement Between the City of Kissimmee and Osceola Mental Health, Inc. DBA Park Place Behavioral Health Care (Dillingham Apartments) and Subordination Agreement

Approval and execution of the HOME Agreement between the City of Kissimmee and Osceola Mental Health, Inc. DBA Park Place Behavioral Health Care (Dillingham Apartments) and Subordination Agreement and to amend the budget accordingly.

7.K Purchase of equipment from Stryker Medical for New Rescue 16

Approval to purchase equipment from Stryker Medical to equip our new Rescue.

7.L Disposal of City Assets

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

7.M Amendment No. 13 to the Professional Service Agreement with AVCON, Inc.

Staff requests Commission approval of Amendment No. 13 to the professional service agreement between the City of Kissimmee and AVCON, Inc. dated December 19, 2017,

for engineering and construction services in connection with Taxiway E Extension and Install Taxiway E Lighting.

7.N Recommendation to Award Construction Contract, Notice to Procure and Notice to Proceed to Hubbard Construction for Taxiway E Extension and Install Taxiway E Lighting

Request Commission approval to Award Construction Contract, Notice to Procure and Notice to Proceed to Hubbard Construction for Taxiway E Extension and Install Taxiway "E" Lighting project at Kissimmee Gateway Airport.

7.O Interlocal Agreement with Osceola County and Tohopekaliga Water Authority Pertaining to the Acquisition of Retail Water, Wastewater, and Reclaimed Water Retail Services of the Sunbridge Stewardship District.

Staff requests approval of an interlocal agreement with Osceola County and Tohopekaliga Water Authority related to the acquisition of retail water, wastewater, and reclaimed water retail services for the Sunbridge Stewardship District.

8. DISCUSSION ITEMS

CITY COMMISSION RECESSES AND CONVENES AS CRA BOARD

8.A Approval of the first renewal of the Agreement with Artistic Holiday Designs for the design and installation of downtown holiday decorations.

Approval of the first one-year renewal of the Agreement between the Downtown Kissimmee Community Redevelopment Agency and Artistic Holiday Designs for the design and installation of downtown holiday decorations.

CRA Manager Samia Singleton reviewed the City's positive experience with Artistic Holiday Designs, LLC and is seeking CRA Board approval for the first renewal of the contract.

Deputy City Manager Matthews clarified for the CRA Board that approval of the first renewal is only a technicality for funding allocation purposes and that the term of the original contract remains for three (3) years.

Commissioner Alvarez made a motion to approve the contract renewal. Commissioner Eady seconded the motion.

Motion carried 5-0.

CRA BOARD ADJOURNS AND RECONVENES AS THE CITY COMMISSION

8.B Advisory Board Vacancy - Board of Adjustment

The Commission is requested to make an appointment to fill a vacancy on the Board of Adjustment.

Commission Castano does not yet have a viable candidate for the vacancy.

9. HEAR CITY OFFICIALS

9.A CITY MANAGER

Deputy City Manager Matthews reviewed the emergency management initiatives for the upcoming cold weather anticipated in Central Florida. She informed the Commission and audience that the First United Methodist Church in St. Cloud will be open during

this time as a shelter. She additionally highlighted the Senior Brunch to be hosted on December 22nd at Oak Street Park Community Center. She encouraged the support and celebration of the seniors in our community and commended the Parks and Recreation Department on their efforts to provide transportation to the event.

9.B CITY ATTORNEY

City Attorney Sanchez de Fuentes wished everyone a Happy Holiday.

9.C CITY COMMISSION

Commissioner Castano wished everyone a Merry Christmas and Happy New Year.

Commissioner Eady commended City staff on the Festival of Lights Parade. She spoke with the residents directly, who all provided positive remarks about their experience.

Commissioner Alvarez wished everyone a Happy Holiday and to be mindful of holiday anxiety by reaching out to those in need. He will be serving pancakes on December 25th at the Salvation Army located at 700 Union Street.

Commissioner Martinez announced an event scheduled for December 24th at Mill Creek Mall to promote the new food trucks and toys will also be given out. She is still taking donations until December 23rd. She expressed her excitement about her daughter's return home from the Navy and commended City staff on the Festival of Lights Parade. Deputy City Manager Matthews and Commissioner Martinez engaged in discussion regarding the non-profits Social Services funding allocations that took place a few weeks prior and specifically reviewed the diverse funding for the larger organizations in Osceola County and the challenges non-profits face in our area.

Mayor Gonzalez and Commissioner Martinez continued the discussion regarding funding as it related to organizations outside of the recipients of City funds. Attorney Sanchez de Fuentes simplified that any discussions regarding City business or funding can and should only be discussed on the dais and that all Commissioners must comply with the Sunshine Law.

Mayor Gonzalez ended that she will continue to do her job and accomplish the goals she has set out to accomplish. She expressed her appreciation for an event this past Sunday where she partnered with the Sheriff's Office for a cookout and gift giveaway. She wished everyone a Merry Christmas and Happy New Year.

10. ADJOURNMENT

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

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

ITEM 7.B

Purchase and installation of replacement Heating, Ventilation, and Air Conditioning (HVAC) systems for the Central Services Complex

Request

Approval to purchase and install the replacement of four (4) Trane split systems in the amount of \$321,144.00.

Explanation

The Facilities Management Division of the Public Works & Engineering Department will utilize the City's continuing service contract with Trane to complete this work. The air-conditioning units at Central Services complex were installed in 2011. Since that time, there have been repairs which have extended the service life of the units. The existing units are aging and beginning to malfunction. Currently, these four (4) units have malfunctioning compressors that cause the facility not to cool properly.

Staff has determined it to be in the best interest of the city to replace these units in order to improve efficiencies and reduce maintenance costs.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
56045606/506393	CS2322		\$250,000.00	\$250,000.00
56045606/506494	CS2320	Decrease	\$150,000.00	\$71,144.00

Financial Summary:

Adequate funds are available in the Central Services budget for this project. \$71,144.00 will be transferred from Project CS2320 to Project CS2322 to cover the full purchase amount.

Recommendation

Staff recommends Commission approval to purchase and install the replacement of four (4) split systems in the amount of \$321,144.00.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering
Presenter: Mike Steigerwald

Attachment(s):

City of Kissimmee

1. (S) Trane Proposal
2. (S) Task Work Order to Trane



Trane Turnkey Proposal



Turnkey Proposal For:

Robert Masiku
City of Kissimmee
100 North Alaska Ave
KISSIMMEE, FL 34741 USA

Local Trane Office:

Trane U.S. Inc.
2301 Lucien Way, Suite 430
Maitland, FL 32751

Local Trane Representative:

Allison Hunt
Account Manager, Services
Cell: (321) 228-8871
Office: (407) 660-1111

Proposal ID: 3140985 version 6
Replacement of Split Systems 1.1, 1.4, 1.7
and 10.1

Date: December 15, 2022

**Prepared For:**

Robert Masiku

Date:

December 15, 2022

Job Name:

Kissimmee Services and Engineering Addison

Proposal Number:

3140985v6

Delivery Terms:

Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:

Net 30

State Contractor License Number:

CMC1249843

Proposal Expiration Date:

30 Days

Scope of Work

“Scope of Work” and notations within are based on the following negotiated scope of work with and based on the site surveys performed on 02/11/22.

Turnkey Installation of HVAC Equipment

- Replacement of four (4) split systems with tags 1.1, 1.4, 1.7 and 10.1. These four (4) are 100% outside air systems which meet the Department of Energy 2023 Requirements.
- Provide Morganizer Conversions on split systems 1.1, 1.4, 1.7 and 10.1.
- Provide Trane factory start-up and commissioning of new units.
- 2nd-5th Trane Whole Unit Parts Warranty.

Mechanical Installation

- Provide labor and materials to recover the existing refrigerant from the four (4) split systems.
- Provide labor and materials to demo the existing four (4) air handling units (AHUs) and four (4) condensers.
- Provide and install four (4) new split systems.
- Set new condensing units on existing concrete pads.
- Provide labor and materials to re-connect the existing supply, return and outside air duct to new AHUs.
- Provide labor and materials to pipe from new unit to existing copper line sets.
- Provide labor and materials to install new sight glasses at new condensing units.
- Provide labor and materials to pressure test new refrigerant line connections to ensure a leak free install.
- Provide labor and materials to reinsulate ductwork and piping in areas affected by new work. Insulation type and finishes to match existing.
- Provide labor and materials to re-connect the existing low voltage to the new units.
- Provide labor and materials to install new condensate drain connections with overflow switches.
- Provide labor and materials to evacuate new systems to proper micron levels.
- Provide labor and materials to disconnect and reconnect the existing high voltage electrical to new.
- Provide all necessary crane, lulls and rigging to remove and set equipment.
- Provide necessary permitting for job.
- Provide clean up and materials and debris removal from site.
- Project Management and Supervision.

Turnkey systems services not included

- No temporary air is included.
- No test or balance work is included.
- No controls of any kind are included. A separate proposal is provided for this upgrade.
- No engineering or engineered drawings are included.
- No fire alarm or fire sprinkler work.
- All work not specified is not included and is to be considered extra.

Proposal Notes/ Clarifications

- All work to be performed during normal business hours (8am to 5pm, M-F, non-holidays)
- Proposal does not include "Premium Time" or Price Contingency therefor
- Equipment Order Release and Services rendered are dependent on receipt of PO/Subcontract and credit approval
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- Asbestos or hazardous material abatement removal shall be performed by customer

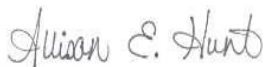
Pricing and Acceptance

Robert Masiku
City of Kissimmee
100 North Alaska Ave
KISSIMMEE, FL 34741 USA

Site:
Kissimmee Services and Engineering
100 N. Alaska Ave
Kissimmee, FL 34741

Pricing
Investment for Turnkey Replacement (*Including appropriate Sales and/or Use Tax, if required by law*).....\$321,144.00

Respectfully submitted,



Allison E. Hunt
Account Manager, Services
Trane U.S. Inc.
(407) 660-1111

ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

We value the confidence you have placed in Trane and look forward to working with you.

COVID-19 NATIONAL EMERGENCY CLAUSE

The parties agree that they are entering into this Agreement while the nation is in the midst of a national emergency due to the Covid-19 pandemic ("Covid-19 Pandemic"). With the continued existence of Covid-19 Pandemic and the evolving guidelines and executive orders, it is difficult to determine the impact of the Covid-19 Pandemic on Trane's performance under this Agreement. Consequently, the parties agree as follows:

1. Each party shall use commercially reasonable efforts to perform its obligations under the Agreement and to meet the schedule and completion dates, subject to provisions below;
2. Each party will abide by any federal, state (US), provincial (Canada) or local orders, directives, or advisories regarding the Covid-19 Pandemic with respect to its performance of its obligations under this Agreement and each shall have the sole discretion in determining the appropriate and responsible actions such party shall undertake to so abide or to safeguard its employees, subcontractors, agents and suppliers;
3. Each party shall use commercially reasonable efforts to keep the other party informed of pertinent updates or developments regarding its obligations as the Covid-19 Pandemic situation evolves; and
4. If Trane's performance is delayed or suspended as a result of the Covid-19 Pandemic, Trane shall be entitled to an equitable adjustment to the project schedule and/or the contract price.

Submitted By: Allison Hunt	Cell: (321) 228-8871 Office: (407) 660-1111 Proposal Date: December 15, 2022
CUSTOMER ACCEPTANCE City of Kissimmee	TRANE ACCEPTANCE Trane U.S. Inc.
Authorized Representative	 Authorized Representative
Printed Name	Erik Smedal Printed Name Area General Manager - Central & North Florida
Title	Title 01/05/2023
Purchase Order	Signature Date
Acceptance Date:	License Number:

TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

“Company” shall mean Trane U.S. Inc..

1. Acceptance; Agreement. These terms and conditions are an integral part of Company’s offer and form the basis of any agreement (the “Agreement”) resulting from Company’s proposal (the “Proposal”) for the commercial goods and/or services described (the “Work”). **COMPANY’S TERMS AND CONDITIONS AND EQUIPMENT PRICES ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. Prices in the Proposal are subject to change at any time upon notice to Customer. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer’s order shall be deemed acceptance of the Proposal subject to Company’s terms and conditions. If Customer’s order is expressly conditioned upon Company’s acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company’s terms and conditions attached or referenced serves as Company’s notice of objection to Customer’s terms and as Company’s counteroffer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company’s counteroffer will be deemed accepted. Notwithstanding anything to the contrary herein, Customer’s acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company’s terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer’s obligation to pay for Work rendered by Company to the date of cancellation.

2. Connected Services. In addition to these terms and conditions, the Connected Services Terms of Service (“Connected Services Terms”), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

3. Title and Risk of Loss. All Equipment sales with destinations to Canada or the U.S. shall be made as follows: FOB Company’s U.S. manufacturing facility or warehouse (full freight allowed). Title and risk of loss or damage to Equipment will pass to Customer upon tender of delivery of such to carrier at Company’s U.S. manufacturing facility or warehouse.

4. Pricing and Taxes. Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer’s tax-exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Within thirty (30) days following Customer acceptance of the Proposal without addition of any other terms and conditions of sale or any modification, Customer shall provide notification of release for immediate production at Company’s factory. Prices for Work are subject to change at any time prior to shipment to reflect any cost increases related to the manufacture, supply, and shipping of goods. This includes, but is not limited to, cost increases in raw materials, supplier components, labor, utilities freight, logistics, wages and benefits, regulatory compliance, or any other event beyond Company’s control. If such release is not received within 6 months after date of order receipt, Company reserves the right to cancel any order. If shipment is delayed due to Customer’s actions, Company may also charge Customer storage fees. Company shall be entitled to equitable adjustments in the contract price to reflect any cost increases as set forth above and will provide notice to Customer prior to the date for which the increased price is to be in effect for the applicable customer contract. In no event will prices be decreased.

5. Exclusions from Work. Company’s obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.

6. Performance. Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer’s expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.

7. Payment. Customer shall pay Company’s invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.

8. Time for Completion. Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so. Delivery dates are approximate and not guaranteed. Company will use commercially reasonable efforts to deliver the Equipment on or before the estimated delivery date, will notify Customer if the estimated delivery dates cannot be honored, and will deliver the Equipment and services as soon as practicable thereafter. In no event will Company be liable for any damages or expenses caused by delays in delivery.

9. Access. Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site’ owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company’s access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer’s building automation system (BAS) and/or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer’s request.

10. Completion. Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company’s representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer’s failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

11. Permits and Governmental Fees. Company shall secure (with Customer’s assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company’s subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.

12. Utilities During Construction. Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.

13. Concealed or Unknown Conditions. In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

14. Pre-Existing Conditions. Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

15. Asbestos and Hazardous Materials. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

16. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

17. Customer's Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead).

18. Indemnity. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

19. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, INCLUDING CONTAMINANTS LIABILITIES, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.

20. CONTAMINANTS LIABILITY

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGE TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION, MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANT LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANTS LIABILITIES.**

21. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

22. Limited Warranty. Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the

Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company ("Third-Party Product(s)") are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN. THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.**

23. Insurance. Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

24. Commencement of Statutory Limitation Period. Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

25. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

26. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

27. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions in effect as of the date of this subcontract: 52.203-19; 52.204-21; 52.204-23; 52.219-8; 52.222-21; 52.222-26; 52.222-35; 52.222-36; 52.222-50; 52.225-26; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

28. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that

Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.251-10(1221)
Supersedes 1-26.251-10(0821)



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

Work Order #:

Purchase Order#:

1/3/2023

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to Trane U.S., Inc. with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

Replacement of four (4) split systems at Central Services

FORM OF COMPLETED DELIVERABLES:

Labor and Materials

BASIS OF PAYMENT: Services shall be made on the basis of Invoice method in accordance with the Scope of Services, the total not to exceed \$321,144.00 without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within TBD calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Replacement of four (4) split systems at Central Services	\$321,144.00
2)	
3)	
4)	
5)	
	\$321,144.00
Contract Dollars:	\$321,144.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$321,144.00

*NOTE: Subject to your acceptance of Trane's Terms & Conditions as referenced in Trane Proposal dated 12/15/2022.

Accepted By:

(Signature)

Title/Position: Area General Manager - Central & North Florida

City Engineer: Ashley L. Willis

City Engineer

(Signature)

Approved By:

Director, PW&E

(Signature)

Requested By: Robert Masiku

(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)

ITEM 7.C

Purchase and installation of replacement Variable Air Volume systems for the City Hall Building

Request

Approval to purchase and install replacement Variable Air Volume (VAV) systems via the continuing services contract with Trane for the City Hall building, in the amount of \$98,637.00.

Explanation

The Facilities Management Division of the Public Works & Engineering Department will manage the VAV system project on the first floor of the City Hall building. Initial approval to purchase the replacement of the VAV system was approved in the Fiscal Year 22-23 budget.

The City Commission executed a continuing services agreement with Trane U.S., Inc. to provide comprehensive HVAC products and installation services. Trane has presented the City with a HVAC solution that will help the City of Kissimmee reach its performance goals and objectives. The proposed project will provide a control system that will help achieve a comfortable building environment for the people who occupy the building. Trane will provide a reliable building management system and control products that improve system performance.

Key benefits will be upgraded from legacy controls and failing worn gear air dampers to the latest Trane BACnet Wireless controls. Serviceable parts are readily available for reduced downtime and ease of access, efficient system control with Trane programming and software tools. The replacement will consist of seventeen (17) VAV controllers, air dampers and space temperature sensors.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
56045606-506393	CS2318		\$99,956.00	\$98,637.00

Financial Summary:

Adequate funds are available in the Central Services fund for this project.

Recommendation

Staff recommends City Commission approval to purchase and install replacement VAV systems via the continuing services contract with Trane for the City Hall building, in the amount of \$98,637.00.

REQUESTED CITY COMMISSION ACTION:

Approve

City of Kissimmee

Department: Public Works & Engineering
Presenter: Mike Steigerwald

Attachment(s):

1. (S) Trane Controls Proposal for City Hall VAV's
2. (S) Task Work Order Form



Trane Controls Proposal



Controls Proposal For:

Robert Masiku

Facilities Construction & Maintenance Manager

City of Kissimmee

100 North Alaska Ave

Kissimmee, FL 34741 U.S.A.

Local Trane Office:

Trane U.S. Inc.

2301 Lucien Way, Suite 430

Maitland, FL 32751

Local Trane Representative:

Nathan Bloom

Account Manager Controls

Cell: (407) 509-7141

Office: (407) 660-1111

Allison Hunt

Account Manager

Proposal ID: 7130136

Date: January 3, 2023



TRANE CONTROLS PROPOSAL

Executive Summary

Trane is pleased to present a solution to help City of Kissimmee reach its performance goals and objectives. This proposed project will enhance your operation by helping you to optimize your resources, improve the comfort in your facility, and reduce energy costs.

We appreciate the effort from City of Kissimmee to assist in the system analysis and business discussions. Because of your efforts, we were able to develop a proposal that offers solutions to your specific concerns, based on Trane system knowledge and application expertise.

As your partner, Trane is committed to providing controls to achieve a comfortable building environment for the people who occupy the building. For the people who own, manage and maintain the building, Trane is committed to providing reliable building management systems and control products that improve system performance.

Some key features and benefits City of Kissimmee should expect from this project are highlighted below.

- Upgrade from legacy controls and failing worm gear air dampers to the latest Trane BACnet Wireless controls technology with new air dampers
- Serviceable parts are readily available for reduced downtime and ease of access
- Efficient system control with Trane programming and software tools

Trane appreciates the opportunity to earn your business. This investment will provide City of Kissimmee with the capability to potentially reduce operating costs and improve comfort conditions in your facility.

We look forward to partnering with City of Kissimmee for all of your control products and service needs.

WE VALUE THE CONFIDENCE YOU HAVE PLACED IN TRANE AND LOOK FORWARD TO PARTNERING WITH YOU.

Nathan Bloom
Account Manager Controls, Trane U.S. Inc.

Allison Hunt
Account Manager



Prepared For:
Robert Masiku

Date:
January 3, 2023

Job Name:
City of Kissimmee City Hall 1st FL VAV Retrofit

Proposal Number:
7130136

Delivery Terms:
Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:
Net 30

State Contractor License Number:
CMC 1249843

Proposal Expiration Date:
30 Days

Scope of Work

"Scope of Work" and notations within are based on the following negotiated scope of work with Javier Romero and based on the site surveys performed on 10/22/2021.

This scope entails the replacement of the existing seventeen (17) Variable Air Volume (VAV's) controllers, air damper and space temperature sensors to Trane's latest wireless BACnet controller at City Hall facility. The units in question are a generation of Trane terminal unit which utilized a screw-drive plunger style damper. Replacement parts for said screw drive units are no longer available and service support for these take longer time frames to repair. Trane has developed a round in round out (RIRO) retrofit kit that allows for the plunger assembly to be replaced without the need for replacement of the entire terminal unit. Please note that some VAV units may have increased acoustic air noise due to the new flap damper style. Pricing below for this service has been budgeted for the damper, zone sensor, and controller for each VAV to be replaced.

Controls systems and equipment

- This scope of work pertains to the 1st floor of City Hall only.
- Modify the Trane Tracer® SC+ & Synchrony™ Control System based Building Automation System (BAS) complete with custom graphics and SC+ software licenses for control and monitoring of the scope of work below. System interface to be web based with user access via any standard internet browser.
- Provide and install seventeen (17) Round In Round Out (RIRO) Kits with the following;
 - Trane BACnet Air-Fi Wireless controller
 - Trane Air-Fi Wireless Zone Sensor
 - Air Damper Actuator
 - Air Flow Ring
- Modify existing duct work
- Material cleanup, removal of debris and cleaning of areas after work performed
- Provide and install unit ceiling labels/tagging like we did for the 2nd and 3rd Floors for the 1st, 4th and 5th floors as part of this work.

Controls systems services included

- Project Management
- Record Control Submittal As-Built Drawings
- Control Panel(s) and Low Voltage Wiring installation
- Control System Programming & Graphics
- Control System VAV Commissioning
- Includes up to 4 hours of on-site system training to owner personnel



Controls systems services not included

- Demolition/removal or replacement of existing devices/sensors quoted as "assumed" to be in working condition
- All wiring at or above 110/120 volts.
- Furnishing, installing, controlling, or wiring of smoke dampers, combination fire/smoke dampers, reset stations, duct detectors, smoke detectors, or other fire alarm system devices.
- Installation of control dampers, valve bodies, flow sensors, flow meters, wells, gauges, or pressure taps.
- Furnishing, installing, or power wiring of VFDs and starters.
- Installation work to be performed afterhours normal business hours
- Any temporary controls or wiring
- Any filters, internal duct board or diffusers work of any kind
- Controls for any systems not listed above are excluded
- Repair or replacement of any equipment being controlled other than the above listed scope
- No patching or painting of any kind
- No Fire Alarm work is included
- No Test and Balance work is included
- No breakers, fuses, heater elements or disconnects of any kind

Proposal Notes/ Clarifications

- Installation work to be performed "Afterhours normal business hours"
- Proposal does include "Premium Time" for afterhours work
- Equipment Order Release and Services rendered are dependent on receipt of PO/Subcontract and credit approval
- Some new VAV units installed may have increased acoustic air noise due to the new flap damper style
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- This scope of work pertains to the 1st floor of City Hall only.



Pricing and Acceptance

Robert Masiku
Facilities Construction & Maintenance Manager
City of Kissimmee
100 North Alaska Ave
Kissimmee, FL 34741 U.S.A.

City Hall
101 Church St
Kissimmee, FL 34741

Price

Total Investment Price:.....\$98,637.00 USD

Financial items not included

- Permits
- Bid Bond
- Payment and Performance Bond
- Liquidated Damages
- Demurrage or Storage Charges
- Participation in OCIP or CCIP Insurance Programs

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Nathan Bloom', written over a faint circular stamp.

Nathan Bloom
Account Manager Controls
Trane Florida
(407) 509-7141
nbloom@trane.com

Allison Hunt
Account Manager
Trane Florida



ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

We value the confidence you have placed in Trane and look forward to working with you.

COVID-19 NATIONAL EMERGENCY CLAUSE

The parties agree that they are entering into this Agreement while the nation is in the midst of a national emergency due to the Covid-19 pandemic ("Covid-19 Pandemic"). With the continued existence of Covid-19 Pandemic and the evolving guidelines and executive orders, it is difficult to determine the impact of the Covid-19 Pandemic on Trane's performance under this Agreement. Consequently, the parties agree as follows:

1. Each party shall use commercially reasonable efforts to perform its obligations under the Agreement and to meet the schedule and completion dates, subject to provisions below;
2. Each party will abide by any federal, state (US), provincial (Canada) or local orders, directives, or advisories regarding the Covid-19 Pandemic with respect to its performance of its obligations under this Agreement and each shall have the sole discretion in determining the appropriate and responsible actions such party shall undertake to so abide or to safeguard its employees, subcontractors, agents and suppliers;
3. Each party shall use commercially reasonable efforts to keep the other party informed of pertinent updates or developments regarding its obligations as the Covid-19 Pandemic situation evolves; and
4. If Trane's performance is delayed or suspended as a result of the Covid-19 Pandemic, Trane shall be entitled to an equitable adjustment to the project schedule and/or the contract price.

Submitted By: Nathan Bloom	Cell: (407) 509-7141 Office: (407) 660-1111 Proposal Date: October 21, 2022
CUSTOMER ACCEPTANCE	TRANE ACCEPTANCE
City of Kissimmee	Trane U.S. Inc.
Authorized Representative	<i>Allison Hunt</i> Authorized Representative
Printed Name	<i>Allison Hunt</i> Printed Name
Title	<i>Account Manager</i> Title
Purchase Order	<i>January 5, 2023</i> Signature Date
Acceptance Date:	License Number: CMC 1249843

**TERMS AND CONDITIONS – COMMERCIAL INSTALLATION**

"Company" shall mean Trane U.S. Inc..

1. **Acceptance; Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the commercial goods and/or services described (the "Work"). COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counter-offer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company's counter-offer will be deemed accepted. Customer's acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Work rendered by Company to the date of cancellation.
2. **Connected Services.** In addition to these terms and conditions, the Connected Services Terms of Service ("Connected Services Terms"), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.
3. **Pricing and Taxes.** Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Following acceptance without addition of any other terms and condition of sale or any other modification by Customer, the prices stated are firm provided that notification of release for immediate production and shipment is received at the factory not later than 3 months from order receipt. If such release is received later than 3 months from order receipt date, prices will be increased a straight 1% (not compounded) for each one-month period (or part thereof) beyond the 3 month firm price period up to the date of receipt of such release. If such release is not received within 6 months after date of order receipt, the prices are subject to renegotiation, or at Company's option, the order will be cancelled. Any delay in shipment caused by Customer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees.
4. **Exclusions from Work.** Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.
5. **Performance.** Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.
6. **Payment.** Customer shall pay Company's Invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.
7. **Time for Completion.** Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so.
8. **Access.** Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site' owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer's building automation system (BAS) and/or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer's request.
9. **Completion.** Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.
10. **Permits and Governmental Fees.** Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.
11. **Utilities During Construction.** Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.
12. **Concealed or Unknown Conditions.** In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.



13. Pre-Existing Conditions. Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

14. Asbestos and Hazardous Materials. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

15. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

16. Customer's Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead).

17. Indemnity. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

18. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.

19. COVID-19 LIMITATION ON LIABILITY

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL TRANE BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH) OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO COVID-19 (INCLUDING THE SPREAD, TRANSMISSION OR CONTAMINATION THEREOF) (COLLECTIVELY, "COVID-19 LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES TRANE FROM ANY SUCH COVID-19 LIABILITIES.**

20. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

21. Limited Warranty. Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Trane; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF**



MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, IS MADE REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL TRANE HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.

22. Insurance. Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

23. Commencement of Statutory Limitation Period. Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

24. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

25. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 80-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

26. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions in effect as of the date of this subcontract: 52.203-19; 52.204-21; 52.204-23; 52.219-8; 52.221-21; 52.222-26; 52.222-35; 52.222-36; 52.222-50; 52.225-26; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

27. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.251-10(0720)
Supersedes 1-26.251-10(0620)



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

Work Order #:

Purchase Order#:

1/3/2023

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to Trane U.S., Inc. with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

City of Kissimmee City Hall 1st FL VAV Retrofit

FORM OF COMPLETED DELIVERABLES:

Labor and Materials

BASIS OF PAYMENT: Services shall be made on the basis of Invoice method in accordance with the Scope of Services, the total not to exceed \$98,637.00 without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within TBD calendar days from the receipt of the official Notice to Proceed from the City.

TASK

FEE

1) City of Kissimmee City Hall 1st FL VAV Retrofit	\$98,637.00
2)	
3)	
4)	
5)	
	\$ 98,637.00

Contract Dollars: \$98,637.00

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

CONTRACT TOTAL DOLLARS: \$98,637.00

NOTE: Subject to your acceptance of Trane's
Terms & Conditions as referenced in Trane Proposal dated 01/03/2023.

Accepted By:

(Signature)

Requested By: Robert Masiku

(Signature)

Title/Position: Area General Manager - Central & North Florida

Approved By:

City Manager

(Signature)

City Engineer: Ashley L. Willis

Approved By:

Mayor

(Signature)

City Engineer

(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

ITEM 7.D

Continuing Services Contract with Trane Commercial Systems for Heating, Ventilation, and Air conditioning (HVAC) services at City-owned Facilities

Request

Approval of a continuing services contract with Trane Commercial Systems for maintenance of the heating, ventilation, and air conditioning (HVAC) equipment, including Building Automation System (BAS), at City-owned facilities.

Explanation

The Facilities Management Division of the Public Work & Engineering Department maintains the heating, ventilation, and air conditioning (HVAC) systems for all city-owned buildings. The City's annual HVAC services contract is necessary for the continuing service of the Trane HVAC units/systems within the city buildings. This is a piggyback purchase agreement through the Brevard County HVAC Preventative Maintenance and Minor Repair Services contract with Trane, U.S., Inc. (RFP-6-22-12) illustrated in Exhibit A attached to the agenda item.

The term of the continuing services agreement between the City of Kissimmee and Trane shall be three (3) years with two (2) one year renewal options starting on the date indicated in the contract attached to the agenda item. The following is the agreed upon amount for each year of service.

Contract Year	Annual Amount - All Sites USD
Year 1	61,515.00
Year 2	64,590.00
Year 3	67,818.00
Year 4	71,211.00
Year 5	74,774.00

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
56045603-503434			\$306,439.35	\$61,515.00

Financial Summary:

Adequate funds are available in the Facilities operating budget to cover the cost.

Recommendation

Staff recommends City Commission approval of a continuing services contract with Trane Commercial Systems for maintenance of the heating, ventilation, and air conditioning (HVAC) equipment, including Building Automation System (BAS), at City-owned facilities.

City of Kissimmee

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter: Mike Steigerwald

Attachment(s):

1. (S) Continuing Services Contract between COK and Trane (1)
2. (S) Task Work Order - Trane 3

AGREEMENT TO PIGGYBACK CONTRACT FOR HVAC SERVICES

THIS AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2022 (the “Effective Date”), by and between the **City of Kissimmee** (“**COK**”), whose address is 100 N. Alaska Ave, Kissimmee, FL 34741 and **TRANE U.S. Inc.**, a Delaware corporation, an address of which is 2301 Lucien Way Suite 430, Maitland, FL 32751 (“**CONTRACTOR**”). COK and CONTRACTOR are at times hereinafter referred to respectively as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, the COK has the legal authority to “piggyback” onto a contract procured by another governmental entity when seeking to utilize the same or similar services provided for in said contract in the interest of the public;

WHEREAS, the CONTRACTOR has previously entered into a contract with Brevard County, FL Facilities Maintenance to provide HVAC products, installation, and services, which those parties entered into as a result of CONTRACTOR’s response to COUNTY’s Invitation for Bid # RFP-6-22-12 and the subsequent award by COUNTY to CONTRACTOR for “Countywide HVAC Preventative Maintenance and Repair Services” dated July 5, 2022, a copy of which is attached hereto as **Exhibit “A”** (the “Contract”).

WHEREAS, the COK desires to “piggyback” onto the above referenced Contract for utilization of the same or similar services for HVAC products, installation, and services, and the CONTRACTOR consents to the aforesaid “piggybacking”.

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

1. The above stated recitals are true and correct.
2. CONTRACTOR affirms and ratifies the terms and conditions of the above referenced Contract and agrees to perform the services set forth herein for the COK in accordance with the terms of the Contract.
3. The COK agrees to utilize the HVAC products, installation, and services of the CONTRACTOR in the manner and upon the terms and conditions as set forth in the Contract.
4. Except as otherwise stated herein, the terms and conditions of the Contract shall form the basis of this Agreement with the COK having the rights, duties, and obligations of the County thereunder. The Contract is hereby incorporated into this Agreement. If any provision of this Agreement conflicts with any provision of the Contract, then the terms, conditions, and provisions of the Agreement shall control. Notwithstanding the foregoing, in the event of a conflict between the Contract and Exhibit “B” (defined below), then the Contract shall control.

5. The terms and conditions of the Contract are modified, amended, or supplemented as follows:

5.1 SERVICES AND FEES. The services to be performed by CONTRACTOR for COK are more particularly described in the “Trane Scheduled Service Agreement” attached hereto and incorporated herein as **Exhibit “B”**.

5.2 TERM. The term of the Agreement between COK and Trane U.S. Inc. shall be three (3) years with two (2) one year renewal options starting on the date indicated above.

5.3 GOVERNING LAWS AND REMEDIES. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Florida, and venue shall be in Brevard County, Florida.

5.4 **PUBLIC RECORDS LAW.** The COK is a public entity subject to Chapter 119, Florida Statutes (“Florida Public Records Law”). In the performance of the services set forth herein, both parties shall comply with Florida’s Public Records Law. **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR’S DUTY TO PROVIDE PUBLIC RECORDS PERTAINING TO THIS CONTRACT, CONTACT THE COK’S CUSTODIAN OF PUBLIC RECORDS.**

5.5 NOTICES. All notices, demands, or requests from VENDOR to the COK shall be sent to the COK as follows:

City of Kissimmee
100 N. Alaska Ave.
Kissimmee, FL 34741
Attn.: Robert Masiku, Facilities Construction & Maintenance Manager

6. **COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic exchange bearing the copies of a party's signature shall constitute a valid and binding execution and delivery of this Agreement by such party. Such electronic copies shall constitute enforceable original documents and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. An electronically scanned copy of a signature shall constitute and shall be deemed to be sufficient evidence of a party's execution of this Agreement, without necessity of further proof.

7. All other provisions in the original Contract are fully binding on the Parties and will represent the Agreement between the COK and the CONTRACTOR.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date written below.

“COK”:

CITY OF KISSIMMEE, FL,

By:

Name

Title_____

[SIGNATURES CONTINUED NEXT PAGE]

SIGNED AND DELIVERED IN THE
PRESENCE OF:

Name: _____

Name: _____

“CONTRACTOR”:

TRANE U.S. Inc., a Delaware corporation,

By: 
Name: Erik Smedal

As Its: Area General Manager
Date: 11/17/2022

EXHIBIT “A”

The Contract

HVAC Products, Installation, Labor Based Solutions
and Related Product and Services

(50 pages to follow)



BOARD OF COUNTY COMMISSIONERS

Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

Inter-Office Memo

TO: Commissioner Kristine Zonka, Chair

THRU: Frank Abbate, County Manager

THRU: John P. Denninghoff, Assistant County Manager

THRU: Marc Bernath, Public Works Director

Bernath, Marc

Digitally signed by Bernath, Marc
DN: cn=Bernath, Marc,
email=Marc.Bernath@brevardfl.gov
Date: 2022.06.29 11:46:44 -0400

FROM: Leo Da Silva, Facilities Program Manager

DaSilva, Leonardo

Digitally signed by DaSilva, Leonardo
Date: 2022.06.29 11:44:58 -0400

RE: Contract Execution for RFP-6-22-12 Countywide HVAC Preventative Maintenance and Minor Repair Services with Trane, U.S., Inc.

DATE: June 29, 2022

On August 3, 2021, the Board of County Commissioners granted permission to solicit competitive bids and award contracts for the Annual Supply Bids, Proposals, and Requests for Qualification (FY2021/2022) and/or Negotiate Competitive Agreements. Since that time, Request for Proposal RFP-6-22-12 was advertised and awarded to Trane, U.S., Inc., per the attached Notice of Award for Countywide HVAC Preventative Maintenance and Minor Repair Services. This Board action also authorized the Chair to execute all contracts exceeding \$100,000 in total aggregate value, upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services.

Staff is respectfully requesting the Chair to **sign and date** the attached Contract for Services with Trane, U.S., Inc. The Clerk will attest the Chair's signature.

Clerk to the Board Instructions: Upon action by the Clerk, please contact Jeanette Scott at 321-350-8316 or by email at jeanette.scott@brevardfl.gov for return of the fully executed Contract for Services.

Please feel free to contact our office if you have any questions or concerns.

Encl: Clerk's Memorandum Board Approval 8/3/2021
RFP-6-22-12 Notice of Award
Contract Review and Approval Form
Contract for Services with Trane, U.S., Inc.



August 4, 2021

MEMORANDUM

TO: Steven Darling, Central Services Director

RE: Item F.10., Permission to Issue Annual Supply Bids, Proposals, and Requests for Qualification (FY2021/2022) and/or Negotiate Competitive Agreements

The Board of County Commissioners, in regular session on August 3, 2021, granted Purchasing Services approval to perform actions regarding the list of commodities and services for Fiscal Year 2021-2022; approved the solicitation of competitive bids, quotes, and/or negotiated competitive agreements and award to the lowest responsive, responsible and most qualified vendor(s); approved the solicitation of competitive proposals and requests for qualifications, establishing selection and negotiation committees approved by the County Manager, or designee, and award contracts and/or purchase orders with the highest ranked proposer(s); approved exercising renewal options upon evaluation of supplier performance and recommendation from user departments/offices, establishing continuance of the contract is favorable prior to the renewal of the agreement; and authorized the Chair to execute all contracts, contract renewals, contract amendments, and any necessary contract extensions exceeding \$100,000 in total aggregate value, upon review and approval by the County Attorney, Risk Management, and Purchasing Services. Enclosed is the list of commodities.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

cc: County Manager
Finance
Budget

ANNUAL BID/QUOTE/PROPOSAL LIST

FY 2021/2022

- Over \$100,000 Annually -

COMMODITY/SERVICE	CONTRACT YEAR & RENEWAL OPTION	ESTIMATED ANNUAL EXPENDITURES (>\$100K)
Aggregate (57 Stone, Limerock, Granite Rock Non-Calcareous & Pea Gravel)	Up to 5 years	\$200,000.00
Agricultural & Aquatic Chemicals	Up to 5 years	\$270,000.00
Agricultural Equipment OEM Replacement Parts	Up to 5 years	\$105,000.00
Alarm Inspection, Monitoring, Repair and Replacements	Up to 5 years	\$175,000.00
Asphaltic Concrete	Up to 5 years	\$15,000,000.00
Athletic Court Resurfacing & Lining	Up to 5 years	\$300,000.00
Auctioneer Services	Up to 5 years	Dependent on Sales
Automotive Parts & Batteries	Up to 5 years	\$100,000.00
Insurance All Types	5 years	Dependent on plan participants
Bunker Gear for Brevard County Fire Rescue	5 yr. & 5 (1 yr.) renewals	\$300,000.00
Cab & Chassis Trucks and Other Fleet Equipment	Up to 5 years	Board Approved Capital Outlay
Cold in Place Recycling	Up to 5 years	\$100,000.00
Computer Equipment, Peripherals & Services	Up to 5 years	\$500,000.00
Concrete Pipe	Up to 5 years	\$300,000.00
Concrete Sidewalk, Curb, and Gutter Construction	Up to 5 years	\$340,000.00
Consultant Professional Engineering Services, A&E, Roofing Services, Appraisal Services and Landscape Architects – All Departments	Up to 5 years	Varies per CIP Project and Tasking
Continuing Roofing Contracting Services	Up to 5 years	Varies per CIP Project and Tasking
Continuing General Contractor Services for SCAT Projects	Up to 5 years	Varies per CIP Project and Tasking
Continuing Construction Management Services	Up to 5 years	Varies per CIP Project and Tasking
Contracted Seasonal Recreation Worker Services for Parks and Recreation	Up to 5 years	\$1,002,000.00
Copy Machine Lease	5 yr. & 1 (1 yr.) renewal	\$550,000.00
Debt Collection Services	3 Years	
Deceased Removal and Transport	Up to 5 years	\$180,000.00
Detention Center Kitchen Equipment Services	Up to 5 Years	Varies
Disaster Debris Removal and Recovery Management Services	5 yr. & no renewals	Contingency Agreement Emergency activation
Disaster Debris Removal Services	5 yr. & no renewals	Contingency Agreement Emergency activation
Electrical Contractor Services - Hourly	Up to 5 years	\$265,000.00
Electrical Supplies	Up to 5 years	\$210,000.00
Electronics Waste Recycling Services	Up to 5 years	\$175,000.00
Emergency Generator Repair & Maintenance	Up to 5 years	\$100,000.00
Employee Benefits Consulting Services	5 yr & automatic renewal	\$104,000.00

COMMODITY/SERVICE	CONTRACT YEAR & RENEWAL OPTION	ESTIMATED ANNUAL EXPENDITURES (>\$100K)
EMS Billing Services	Up to 5 years	\$630,000.00
Fencing (Brevard County Cooperative Bid)	Up to 5 years	\$500,000.00
Fertilizers	5 yr. & 5 (1 yr.) renewals	\$100,000.00
Fire Rescue Equipment	Up to 5 years	\$200,000.00
Floor Cleaning - Countywide	Up to 5 years	\$170,000.00
Full Depth Reclamation	Up to 5 years	\$100,000.00
Gasoline, Diesel, Fuel Oils (Brevard County Cooperative Bid)	Up to 5 years	\$2,000,000.00
Grassing Services (Brevard County Cooperative Bid)	Up to 5 years	\$500,000.00
HVAC & Ice Machine Services	Up to 5 years	\$475,000.00
HVAC for Maintenance	Up to 5 years	\$1,700,000.00
Infrastructure Assessment Services, Gravity Sewer Lines, and Manholes	Up to 5 years	\$300,000.00
Inlets, Manholes, & Grates	Up to 5 years	\$485,000.00
Integrated Library Systems	Up to 10 years	\$800,000.00
Irrigation Installation – Parks & Rec	Up to 5 years	\$250,000.00
Insurance All Types (Medical, Dental, Vision, Retiree)	7 years	Dependent on plan participants
Janitorial Services - County Wide	Up to 5 years	\$465,000.00
Janitorial Supplies	Up to 5 years	\$250,000.00
Laboratory Testing & Related Professional Services	Up to 5 years	\$200,000.00
Landfill Stormwater Collection & Gas System Repairs & Installation	Up to 5 years	\$100,000.00
Landscape Design & Detailing Maintenance Svs (Complete) - Facilities	Up to 5 years	\$150,000.00
Lawn Service – Countywide (Parks, Public Works, Fire Rescue, Libraries, Transit Services, UF/Brevard Extension, Medical Examiner, Carriage Gate)	Up to 5 Years	\$925,000.00
Lime Rock for Solid Waste and Public Works	Up to 5 years	\$150,000.00
Marketing Services for SCAT	Up to 5 years	\$400,000.00
Medical Supplies (EMS) - (Brevard County Cooperative Bid)	Up to 5 years	\$1,900,000.00
Mix-In-Place Soil Cement	Up to 5 years	\$250,000.00
Maintenance, Repair, & Operation (MRO) and Industrial Supplies	Up to 5 years	\$500,000.00
Mulching & Disposal Services for Yard Trash & Vegetative Waste (On Site)	Up to 5 years	\$2,200,000.00
Mulching & Yard Trash/Vegetative Disposal Services (Off Site)	Up to 5 years	\$600,000.00
Office Supplies	Up to 5 years	\$350,000.00
On-site Concrete Crushing (Solid Waste)	Up to 5 years	\$100,000.00
Overhead Door & Gate Maintenance Repair – County	Up to 5 years	\$125,000.00
Painting Contractor Services	Up to 5 years	\$200,000.00
Park Amenities – Catalog Discount	Up to 5 Years	\$100,000.00
Personal Protection Equipment (PPE)	Up to 5 years	\$100,000.00
Petroleum Products - Lube Oil	Up to 5 years	\$125,000.00

COMMODITY/SERVICE	CONTRACT YEAR & RENEWAL OPTION	ESTIMATED ANNUAL EXPENDITURES (>\$100K)
Physical Examinations - Fire Rescue	Up to 5 years	\$225,000.00
Pipe, Cured-In-Place Pipe (CIPP)	Up to 5 years	\$3,000,000.00
Plans Examiner Services	Up to 5 years	\$300,000.00
Playground Equipment, Surfacing, Installation & Repair	Up to 5 years	\$300,000.00
Plumbing Services	Up to 5 years	\$160,000.00
Plumbing Supplies Catalog Discount	Up to 5 years	\$150,000.00
Polymer, Sludge Dewatering	Up to 5 years	\$150,000.00
Postal & Courier Services – Libraries	Up to 5 years	\$268,000.00
Pump out Services for Cleaning Baffle Box & Sediment Collection Devices Countywide	Up to 5 years	\$350,000.00
Radio System (800 MHZ) Maintenance Contract	Up to 5 years	\$500,000.00
Removal & Disposal of Dewatered Biosolids	Up to 5 years	\$500,000.00
Removal & Final Disposal of Mulch & Wood Waste	Up to 5 years	\$486,000.00
Retention Pond Mowing (Countywide): Natural Resources & Public Works	Up to 5 years	\$160,000.00
Road Construction Materials	Up to 5 years	\$4,000,000.00
Road Striping - Paint & Reflective Pavement Marking	Up to 5 years	\$150,000.00
Road Striping - Thermoplastic & Reflective Pavement Marking	Up to 5 years	\$1,400,000.00
SAP Support Services	Up to 5 years	\$300,000.00
SCAT Vehicle Fleet Maintenance & Repair Management Services	Up to 5 years	\$4,350,000.00
Security Services - Brevard Government Complexes	Up to 5 years	\$250,000.00
Security Services Unarmed – Multi-departmental	Up to 5 years	\$500,000.00
Select Common Fill - Sarno Road Landfill	Up to 5 years	\$100,000.00
Select Common Fill - for Landfills (CDF Only)	Up to 5 years	\$900,000.00
Septic Tank, Grease Trap, Lift Station & Sewage Hauling Services	Up to 5 years	\$140,000.00
Sodium Hypochlorite Supply Services	Up to 5 years	\$250,000.00
Soil Cement Pub Mill Mix	Up to 5 years	\$180,000.00
Soil Cement with Oil Injection	Up to 5 years	\$100,000.00
Sports Lighting with Related Supplies and Services	Up to 5 years	\$700,000.00
Street Sweeping and Inlet Basket Cleaning	Up to 5 years	\$150,000.00
Structured Cabling System - Small Projects/Limited Drop	Up to 5 years	\$100,000.00
Submersible Pump and Motor Repair Services	Up to 5 years	\$125,000.00
TDC - Website Development & Maintenance Services	Up to 5 years	\$200,000.00
Temporary Employment Services	Up to 5 years	\$250,000.00
Temporary Traffic Control Devices (Barricade Rentals)	Up to 5 years	\$100,000.00
Tires, Equipment, Services, Shredding and Disposals	Up to 5 years	\$735,000.00
Traffic Sign Materials	Up to 5 years	\$100,000.00
Traffic Operations Fiber Optics Construction, Rehab, Maintenance and Emergency Repairs	Up to 5 years	\$240,000.00

COMMODITY/SERVICE	CONTRACT YEAR & RENEWAL OPTION	ESTIMATED ANNUAL EXPENDITURES (>\$100K)
Traffic Signal Construction, Rehab, Maintenance & Emergency Repairs	Up to 5 years	\$600,000.00
Transportation of Dead Bodies	Up to 6 years	\$180,000.00
Travel Media Relations (For TDO)	Up to 5 years	\$200,000.00
Tree Trimming and Removal Services	Up to 5 years	\$200,000.00
Trucking Services	Up to 5 years	\$130,000.00
Uniform Apparel: Fire Rescue	Up to 5 years	\$100,000.00
Uniforms, Rentals with Related Products and Services	Up to 5 years	\$110,000.00
Water & Wastewater Treatment Chemicals - Sodium Hypochlorite (Brevard County Cooperative Bid)	Up to 5 years	\$300,000.00
Welding/Medical Gases & Supplies	Up to 5 years	\$110,000.00
Well Repairs, Maintenance and Rehabilitation Services	Up to 5 years	\$95,000.00

NOTICE OF AWARD
May 31, 2022
RFP-6-22-12 Countywide HVAC Preventative Maintenance
and Minor Repair Services

PROCUREMENT ANALYST: Debbie Feingold

<u>VENDOR</u>	<u>VENDOR CITY/STATE</u>	<u>MEETS MINIMUM REQUIREMENTS</u>	<u>ITEMS AWARDED</u>	<u>PROPOSED COST</u>
Trane U.S. Inc	Maitland, FL	YES	ALL	Estimated Annual Expenditure \$572,641.60
Air Mechanical and Service Corporation	Casselberry, FL	YES	NONE	
Strut Mechanical Inc.	Saint Cloud, FL	YES	NONE	
Hill York	Melbourne, FL	NO		Statement of No-Proposal

☐ BOARD AWARD--AGENDA ATTACHED

☒ APPROVED AWARD (NON-BOARD AGENDA):
(Per Sections III.E. & III.I. & J., BCC-25, PROCUREMENT)


Kathy Wall, Central Services Director

☒ Award to best-ranked proposer, minimum three responses received.

☐ Award to best-ranked proposer, less than three responses received:

AWARDED BY A COMMITTEE CONSISTING OF: Leonardo DaSilva, Facilities; Steven Kimball, Parks and Recreation; Wendi Jo Bost, Libraries

FOR PURCHASING USE ONLY:

☐ ONE-TIME PURCHASE

☒ ANNUAL BID:

EFFECTIVE DATE: Three (3) years from date of contract execution.

RENEWAL OPTION ☐ One year ☒ Two (2) additional one (1) year terms

☒ Prompt Payment Discount Offered ☒ Yes $\frac{1}{2}\%$ if paid within 20 days ☐ NO

☐ Performance and payment bonds received with construction contract documents.

☐ Release Cashier's or Certified Check Received for Bid Deposit on Bids

SPECIAL INSTRUCTIONS TO AWARDED VENDOR:

☒ Please provide certificate of insurance.

☒ Please provide performance bonds as required.

☐ OTHER:

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: TRANE, U.S., Inc.		2. Amount: \$572,641.60	
3. Fund/Account #:		4. Department Name: Public Works/Facilities	
5. Contract Description: Countywide HVAC Maintenance & Repair Service Agreement			
6. Contract Monitor: Mary Bowers		8. Contract Type: CONSTRUCTION	
7. Dept/Office Director: Marc Bernath			
9. Type of Procurement: Request for Proposal (RFP)			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE	
User Agency	☒	☐	Bowers, Mary	Digitally signed by Bowers, Mary Date: 2021.11.02 09:10:24 -04'00'
Purchasing	☐	☐		
Risk Management	☒	☐	Lairsey, Matt	Digitally signed by Lairsey, Matt Date: 2021.12.30 12:16:50 -05'00'
County Attorney	☒	☐	Esseesse, Alexander	Digitally signed by Esseesse, Alexander Date: 2022.01.11 12:34:17 -05'00'

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE	
User Agency	☒	☐	Bowers, Mary	Digitally signed by Bowers, Mary Date: 2022.06.02 14:42:00 -04'00'
Purchasing	☒	☐	Wall, Katherine	Digitally signed by Wall, Katherine Date: 2022.06.06 13:52:19 -04'00'
Risk Management	☐	☐		
County Attorney	☒	☐	Esseesse, Alexander	Digitally signed by Esseesse, Alexander Date: 2022.06.06 13:42:28 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	☐
Department	☐
Program	☐
Contact Name	☐
Cost Center, Fund, and G/L Account	☐
Vendor Information (SAP Vendor #)	☐
Contract Status, Title, Type, and Amount	☐
Storage Location (SAP)	☐
Contract Approval Date, Effective Date, and Expiration Date	☐
Contract Absolute End Date (No Additional Renewals/Extensions)	☐
Material Group	☐
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	☐
"Right To Audit" Clause Included in Contract	☐
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	☐

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: TRANE, U.S., Inc.		2. Amount: \$572,641.60
3. Fund/Account #:	4. Department Name: Public Works/Facilities	
5. Contract Description: Countywide HVAC Maintenance & Repair Service Agreement		
6. Contract Monitor: Mary Bowers		8. Contract Type: CONSTRUCTION
7. Dept/Office Director: Marc Bernath		
9. Type of Procurement: Request for Proposal (RFP)		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	☒	☐	Bowers, Mary Digitally signed by Bowers, Mary Date: 2021.11.02 09:10:24 -04'00'
Purchasing	☐	☐	
Risk Management	☒	☐	Lairsey, Matt Digitally signed by Lairsey, Matt Date: 2021.12.30 12:16:50 -05'00'
County Attorney	☒	☐	Esseesse, Alexander Digitally signed by Esseesse, Alexander Date: 2022.01.11 12:34:17 -05'00'

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	☒	☐	Bowers, Mary Digitally signed by Bowers, Mary Date: 2022.06.02 14:42:00 -04'00'
Purchasing	☐	☐	
Risk Management	☒	☐	Wilson, Shannon Digitally signed by Wilson, Shannon Date: 2022.06.02 15:05:18 -04'00'
County Attorney	☐	☐	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ☒
Department Information	☐
Department	☐
Program	☐
Contact Name	☐
Cost Center, Fund, and G/L Account	☐
Vendor Information (SAP Vendor #)	☐
Contract Status, Title, Type, and Amount	☐
Storage Location (SAP)	☐
Contract Approval Date, Effective Date, and Expiration Date	☐
Contract Absolute End Date (No Additional Renewals/Extensions)	☐
Material Group	☐
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	☐
"Right To Audit" Clause Included in Contract	☐
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	☐

**CONTRACT FOR SERVICES
BETWEEN
TRANE, U.S., INC.
AND
BREVARD COUNTY FLORIDA**

THIS CONTRACT is entered into the date of last signature below, by and between **Brevard County, Florida**, a political subdivision of the State of Florida (hereinafter the "County"), and **TRANE, U.S., INC.**, a business having its primary business location at 2301 Lucien Way, Suite 430, Maitland, Florida 32751 (hereinafter the "Contractor").

WHEREAS, the County issued R.F.P. #6-22-12 seeking a qualified contractor to provide heating, ventilation and air conditioning preventative maintenance services (hereinafter "H.V.A.C."); and

WHEREAS, Contractor submitted a response to the solicitation for such services;

WHEREAS, Contractor's response has been reviewed by the County and is determined to be a responsive and responsible response and was deemed to be the most qualified submission.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1.0 DEFINITIONS

The following words and phrases, when used in this Contract shall have the following meanings:

- "COUNTY" shall mean BREVARD COUNTY, FLORIDA, through the Board of County Commissioners of Brevard County, Florida, or its duly appointed representative.
- "CONTRACTOR" shall mean TRANE, U.S., Inc. The term shall also include its employees, agents, subcontractor, and any other entity under its direction.
- "FACILITY" shall mean any building owned or leased by the County.
- "PROJECT MANAGER" shall mean the Contractor's chief coordinator for all work under this proposal and who normally oversees all proposal operations and makes final decisions, etc.
- "WORK" shall mean the completed services required by the project and contract documents.
- "CONTRACT DOCUMENTS" consist of each and every one of the following: all specifications and terms and conditions, all addenda heretofore issued, purchase order, and contract completion form.
- "MATERIALS" shall mean all items and services used in the execution and completion of repairs and installation services, including all installed parts and equipment. This includes any and all large rental equipment that would normally not be owned by individual vendors. This excludes (except when

pre-approved by County) standard tools and machinery normally used in the industry.

- "RESPONSE" shall mean having a trained and qualified technician physically go to the site and evaluate services required in order to perform work within the designated time.
- "SUB-CONTRACT LABOR" shall mean other labor required whereby required specialization is not part of Contractor's employee workforce.
- "INSTALLER AND SERVICE MECHANIC" shall mean the Contractor's field-based representative (trained and qualified) who normally works independent from supervision, takes general instructions from the Foreman, is licensed and/or approved to complete HVAC installation and/or service work, and directs work of apprentices and helpers, etc.

2.0 CONTRACT BASIS

This Contract is based **R.F.P. #6-22-12** for H.V.A.C. preventative maintenance services.

R.F.P. #6-22-12 and the Contractor's response are incorporated herein by this reference. In the case of the conflicts between the Contract, R.F.P., and the Contractor's Response, the order of priority for these documents shall be this Contract, the R.F.P, and the Response. Any subsequent clarification letters and change orders will become part of the Contract.

3.0 GENERAL INFORMATION

The Contractor shall provide Preventative Maintenance (PM) of Heating, Ventilation, and Air Conditioning (H.V.A.C.) systems within buildings located County-wide. The Contractor shall be responsible for all labor, tools, materials, equipment, transportation, utilities, facilities, and all other associated costs necessary to provide maintenance services. *On occasion the Contractor may be requested to submit a Quote for minor repairs. Contractor will be issued a separate Purchase Order (PO) for these services, if any.*

The Brevard County Facilities Management Division ("Facilities") is responsible for maintaining the buildings throughout Brevard County, Florida. The Contractor shall become familiar with the building operational requirements in each facility and coordinate all services with the Facilities Quality Assurance Coordinator.

Hours of Performance:

- 1) **Standard Hours:** Standard working hours are Monday through Friday, 7:00 AM to 5:00 PM, excluding Brevard County holidays.
- 2) **Emergency Response:** Emergency response *(if requested by the County)* hours may encompass nights, holidays, weekends, twenty-four (24) hours per day, seven (7) days per week and shall be responded to within a maximum of two (2) hours from the time of the request.

4.0 STAFFING REQUIREMENTS

- A. The Contractor shall assign a lead P.O.C. or supervisor with whom the County's Representative may consult regarding contract performance throughout the

entire contract period to ensure his/her work will not conflict with the County's normal operations. The supervisor or POC shall not be replaced without first notifying the Facilities Support Service Manager, or representative, at least seventy-two (72) hours in advance. The name and telephone number of the replacement supervisor or POC shall be provided at that time. Any change to the Contractor's point of contact shall be subject to the approval of the County.

The Contractor's POC shall have the capability to receive service requests by landline telephone and cellular, text messages, and e-mail to facilitate timely service.

- B. The Contractor shall provide a twenty-four (24) hour point of contact with a staffed phone number that will respond to maintenance requests for emergency services on a twenty-four (24) hour per day seven (7) days per week and a 365 days per year basis.
- C. Effective communication with the County staff building occupants is necessary to perform this Scope of Services. Therefore, Contractor shall ensure supervisors and POC's are able to read, write, and speak English fluently.
- D. The Contractor shall not use employees of any temporary employment agency to supplement the work force in County buildings for any reason.
- E. The Contractor shall provide sufficient work force and supervisory personnel to perform the services to the required levels as outlined herein. The Contractor shall also provide backup as needed during all required work hours and at multiple concurrent locations.
- F. The Contractor shall be solely responsible for the actions of its employees, agents and representatives. Technicians hired after contract award shall meet the requirements of the Special Terms and Conditions, Qualification of Bidders for the duration of the Contract.
- G. The Contractor shall ensure that all employees are clean, neat and appropriately attired during the performance of the services. The Contractor shall ensure that all employees are properly dressed with a uniform shirt displaying the company name/logo. The photo ID badge shall be displayed on the front of their uniform shirt at all times when on County property. The Contractor shall be responsible for providing photo ID badges for all employees.
- H. All onsite personnel employed by the Contractor shall conduct themselves in a professional, business-like manner. Such personnel shall not, by word of mouth or deed, express themselves in such a manner as would be construed as conduct being obscene, harassing or offensive by a reasonable, sensitive person. Any such conduct shall be cause for removal from the facility.
- I. All Contractor personnel shall identify themselves at the appropriate administrative office upon arrival on site and prior to beginning work and upon completion of work and leaving worksite.

- J. Contractor shall ensure that technicians are trained on the HVAC systems in place in County facilities.
- K. Training records of any training performed for all existing and newly hired employees must be made available and provided to the County's Representative within twenty-four (24) hours of request.

5.0 PERFORMANCE REQUIREMENTS

- A. All workmanship shall meet the standards specified herein, and shall be accomplished in accordance with approved and accepted industry best practices and technical standards of the: (1) industry, (2) equipment manufacturer, (3) applicable Federal and local standards and codes, and (4) applicable building and safety codes, including, but not limited to:
 - Occupational Safety and Health Act (O.S.H.A.)
 - National Institute for Occupational Safety & Health (N.I.O.S.H.)
 - National Fire Protection Association (N.F.P.A.)
 - American Society of Heating, Refrigeration & Air-Conditioning Engineers (A.S.H.R.A.E.)
- B. The Contractor shall conform to all Federal, State, and Local standards and regulations during the performance of the Contract. Any fines levied due to inadequacies or failure to comply with any and all requirements shall be the sole responsibility of the Contractor.
- C. Any person found not in compliance with any laws, statutes, rules or regulations will not be allowed on the work site. Continued violations by a Contractor shall constitute cause for termination of the Contract.
- D. All of the services required hereunder shall be performed by the Contractor's direct employees or authorized subcontractors under the Contractor's supervision. All personnel engaged in performing the services shall be fully qualified, experienced, and, if required, certified, authorized, licensed and / or permitted under State and local law to perform such services.
- E. Work shall be scheduled to provide the least inconvenience to building occupants and visitors. The Contractor shall coordinate all scheduling activities for services under this contract with the Facilities Quality Assurance Coordinator. The Facilities Quality Assurance Coordinator shall have the final authority on schedules to be implemented.
- F. The County may schedule meetings periodically to review contract terms, performance, and other contract-related matters. The Contractor shall be required to attend all meetings as requested by the County and no additional compensation shall be provided to the Contractor for attending these meetings.
- G. Services not performed in accordance with this Contract shall be considered unsatisfactory and unacceptable. In the event of non-performance or unsatisfactory performance by the Contractor, or its employees, agents, or subcontractors, the County's Representative shall have the right to exercise one

of the following options:

1. Notify the Contractor of non-performance/unsatisfactory performance in writing and allow Contractor to correct such item of non-performance/unsatisfactory performance within a twenty-four (24) hour timeframe. Although the timeframe for making corrections may occur outside of the Contractor's normal working hours, the Contractor shall not receive any additional compensation for such corrective action.
2. The Contractor, upon request by the County, shall remove all Contractor's personnel (including supervisors, points of contact, and subcontractors) from this contract and/or County property who are deemed careless, incompetent, insubordinate, reasonably objectionable, or whose continued employment is deemed to be contrary to the interest of the County as determined by the County, or if it is determined that services are not being performed in accordance with the terms and conditions of this Contract.

The County's request to remove any employee from this Contract shall, in no instance, be considered a request for the Contractor to terminate the designated individual from Contractor's employment. The sole intent is removal from this Contract.

3. After notification to the Contractor and the Contractor's failure to address such concerns within a reasonable time, the County reserves the right to correct any item of non-performance/un-satisfactory performance by any means it deems necessary to ensure the effective operation of the County's facilities. Costs incurred by the County for the correction using County employees or agents may be deducted from payments made to the Contractor. If another Contractor is used to correct the item, that cost will be deducted at the rate charged by the requested Contractor.
- H. The County's Representative may, after appropriate notice is given to the Contractor, take necessary action(s) to address unsatisfactory performance up to and including termination of the Contract for default.
- I. The Contractor shall submit a detailed Corrective Action Plan (CAP) for each report of unsatisfactory performance. The CAP shall fully address the performance deficiency and detail the corrective procedure the Contractor will follow to ensure the deficiency is corrected and to prevent future reoccurrences for the remainder of the Contract. Failure to respond within the time frame allowed may be cause for default and may result in termination of this Contract. The CAP will be accomplished at no cost to the County.
- J. The Facilities Support Service Manager, or designated representative, will review the CAP and advise the Contractor of acceptance or non-acceptance. The County reserves the right to request modifications and/or to reject a CAP. The Contractor shall be fully bound to each accepted CAP for the life of the Contract unless otherwise noted by the County in writing.

6.0 SAFETY REQUIREMENTS

- A. The Contractor shall immediately report to the County Representative the issues which may affect the safety of Brevard County personnel or the public.
- B. Prior to performing service or maintenance on any equipment where the unexpected energizing, startup, or release of stored energy could occur and cause injury, the equipment shall be isolated and rendered inoperative through the use of a lockout device whenever the equipment is capable of being locked-out. The Contractor shall be responsible for ensuring all equipment is safe and secure prior to conducting any activities.
- C. The Contractor shall maintain a Safety Plan and Quality Assurance Plan to ensure that work performed herein conforms to the Contract requirements for the life of the Contract. The Facilities Support Service Manager or authorized County representative shall be notified if there are any changes to the Safety, Quality Assurance, or any other contract-related documents submitted with the original Proposal. The Contractor shall ensure that the Facilities Support Service Manager or authorized County Representative has received the latest versions of all documents for the duration of the Contract.

The County Representative will review the updated plans and provide comments and/or feedback to the Contractor following receipt of the plans. The Contractor shall submit an updated safety plan to the County within ten (10) business days following receipt of the County comments. The County reserves the right to request changes/improvements to this plan at any time throughout the life of the contract.

- D. The Contractor shall ensure the wearing of necessary personal protective equipment (PPE) as required by any applicable laws, regulations, ordinances, and/or manufacturer's instruction. Contractor shall comply with all applicable safety regulations including, but not limited to, NFPA and OSHA.
- E. All equipment used/to be used in the performance of these services shall be properly maintained and shall be subject to inspection by the County upon demand. Any equipment deemed faulty, inoperable, unsafe or improper for its intended purpose shall be moved from the County's premises.
- F. Any damage to County facilities or property due to the services performed by the Contractor shall be the responsibility of the Contractor. The Contractor shall repair such damages at no cost to the County. If Contractor fails to correct such damage, the County will be entitled to complete the work and assess such costs to the Contractor.

7.0 SECURITY AND IDENTIFICATION

- A. Background checks for the Contractor's staff must be approved by the County prior to working in any County facility. All costs for background investigations shall be Contractor's responsibility. The County reserves the right to conduct its own investigation and request any additional

investigative background information of any personnel assigned to perform the services. The Contractor shall furnish, in writing, such information to the extent allowed by law, prior to commencement of services.

- B. Contractor shall comply with the different security requirements for each County facility, including but not limited to:
 - Brevard County Courthouses
 - Brevard County Detention Center
 - Brevard County Sheriff's Office
- C. Background checks and additional security requirements are addressed and detailed in the Scope of Service, Supplemental Information. The Contractor is responsible for reading, understanding, and the application of all contract terms.

8.0 TRAVEL AND PARKING

- A. The Contractor shall be responsible for all travel and per diem costs to and from the various County facilities.
- B. The County will identify locations where Contractor vehicle parking is available. Brevard County will not be responsible for any damage to the vehicles belonging to the Contractor, its employees, agents, or subcontractors, while parked on Brevard County property. Vehicles towed from Brevard County property will be at the expense of the Contractor. Contractor vehicles shall be identified with the Contractor's signage; all signs shall be clearly visible.

9.0 GENERAL PREVENTATIVE MAINTENANCE REQUIREMENTS

- A. The Contractor shall perform each of the applicable tasks herein and all other operations per the equipment manufacturer's operational manuals, specified procedures, and most recent recommendations. The Contractor shall be responsible for obtaining the most recent manufacturer's recommendations.

The Contractor shall notify the Facilities Support Service Manager, or designated representative, in writing, of any and all discrepancies between the procedures set out herein and the manufacturer's specific procedures and operational requirements.

- B. The Contractor shall protect existing warranties on applicable County equipment and follow the manufacturer's recommendations during the warranty period while performing preventative maintenance and repairs activities.
- C. During the course of the Contract, the County reserves the right to add or delete equipment. Unit price for the equipment added shall be per the unit price for the type of equipment on the Price Sheet.

- D. The Contractor shall submit a preventative maintenance service schedule to the Facilities Quality Assurance Coordinator for approval prior to commencement of work. This schedule is subject to change throughout the duration of the Contract at the County's discretion.
- E. Contractor shall be required to provide all belts, air and oil filters. Used filters must be removed from mechanical rooms and rooftops and disposed of properly at Contractor's expense.
- F. When de-energizing for servicing, all energy sources shall be secured, locked and tagged-out in accordance with the latest OSHA requirements.
- G. All materials, equipment, and tools shall be provided by the Contractor and made available at the site prior to start of work. The County will not provide any equipment or tools (i.e., ladders, lifts, dollies, etc.) for the Contractor's use.
- H. All costs for PM services including lifts, all heavy equipment and operators required for services shall be the Contractor's responsibility and calculated in the unit prices on the bid response form. No additional reimbursement will be provided by the County.
- I. The Contractor shall not make alterations to any equipment without prior written approval by the Facilities Quality Assurance Coordinator.
- J. The Contractor is required to pull compressor oil samples for spectroscopic analysis and shall indicate what third-party laboratory will perform the analysis.
- K. Contractors shall adhere to County's PM schedule. No changes shall be allowed without prior authorization by the County in writing.
- L. If during an inspection a condition is discovered that would require an emergency repair, the Contractor shall immediately notify the Facilities Quality Assurance Coordinator.
- M. When the Contractor completes work on any piece of equipment included in this contract, that equipment shall be free of missing components or defects which would prevent it from functioning as originally intended and/or designed.
- N. Contractor shall provide reports to County within seven (7) working days following completion of PM. All reports shall be a detailed written report of all reported deficiencies, readings, logs notes and all other applicable findings.
- O. Contractor shall meet monthly with Facilities Quality Assurance Coordinator (virtual if necessary) to review reports and operating procedures.
- P. Contractor shall not perform any services without an existing purchase order, unless it is an emergency service. Service does not include

meetings, site surveys, and scheduling activities.

- Q. Requirements under this Contract shall supersede any additional language added to work proposals, service tickets, and any other documents supplied by the Contractor.

10. **EQUIPMENT COVERED**

The Contractor shall be required to perform preventative maintenance on the following equipment and their components and attachments.

- **Chillers**: Air to water/water to water type chillers with reciprocating or centrifugal compressors. This includes all parts of the chiller unit from the entering water flange to the leaving water flange including all chill water pumps, flow switches, air separators, controls, condenser and chill water isolation valves and chill water make-up valve.
- **Cooling Towers- All Types**: Cooling tower, cooling tower fans, fan motors, fan drives, cooling tower isolation valves, makeup water float, valve assemblies, pumps, and any other equipment or controls needed for proper cooling tower operation, including the tower water temperature control.
- **Air Handlers/Condensing Units**: All equipment related to split systems, package units and Outdoor Air Units.
- **Motors**: All motors related to the chillers, air handling units (AHU's), Thermal Energy Storage Systems, and the cooling towers.
- **Pumps**: All pumps related to the chiller air handling units (AHU's), Thermal Energy Storage Systems and the cooling tower. This includes standard pumps and pumps controlled by variable frequency drives (VFD).
- **Fans**: All fans related to chiller cooling towers, air handling units (AHU's), outside air, and building exhaust systems.
- **Boilers**: To include all boilers which supply re-heat for H.V.A.C. systems, all heating boilers, "hot water and steam". All parts of boiler from the entering water flange to the leaving water flange (to include all heating, flow switches, controls and boiler make-up water valves/float).
- **Refrigerant Monitors**: All Freon monitoring devices. This applies to all buildings with Freon gas monitoring devices. To include repairs as well as monitoring chiller equipment room condition.
- **Insulation**: Insulation removed during repairs of chiller/heating equipment will be re- insulated by the contractor.
- **Variable Frequency Drives (VFD) and Starters**: All VFD's and starters related to applicable equipment list shall be covered under this agreement.

- **Water Treatment Chemical Services:** Provide chemical treatment for the chilled water systems (closed loop), the cooling tower condenser water systems (open loop) and condenser water (closed loop) in operation at sites throughout the County.
- **Thermal Storage Systems (TSS):** Maintenance to be performed as per manufactures Installation, Operations and Maintenance (IOM) guidelines.
- **Glycol Station:** Maintenance to be performed as per manufactures Installation, Operations and Maintenance (IOM) guidelines.
- **Plate Heat Exchangers:** Maintenance to be performed as per manufactures Installation, Operations and Maintenance (IOM) guidelines.
- **Filters:** The Contractor will supply pleated filters that have a minimum 30% efficiency to the Contractor. The Contractor shall be responsible for changing filters when performing preventative maintenance. Each filter when changed by the Contractor must have the change date written on the filter.
- **Building Automation Systems (BAS):** All equipment related to existing front-end building control units, programming and all other control equipment related to the BAS system including updates and upgrades.

11. **CENTRIFUGAL AND RECIPROCATING WATER-COOLED CHILLERS**

A. **Quarterly Services: Centrifugal and Water-Cooled Chillers**

- 1) Check the general operation of the unit.
- 2) Inspect for refrigerant leaks and report results.
- 3) Log the operating temperatures, pressures, voltages, and amperages.
- 4) Check the operation of the purge unit and control circuit. Report deficiencies.
- 5) Perform visual inspection of the lubrication system and report deficiencies.
- 6) Check the operation of the motor and starter and report deficiencies.
- 7) Check tightness of the motor terminal connections at the Load and Line side and report deficiencies. Tighten connections as needed. Check the torque specifications.
- 8) Analyze the recorded data. Compare the data to the original design conditions.
- 9) Review operating procedures with operating personnel.

B. **Annual Services: Centrifugal and Water-Cooled Chillers**

- 1) Check and record refrigerant system level pressures and temperatures.
- 2) Pull refrigerant sample for spectrographic analysis for moisture, using approved containers.
- 3) Inspect for proper fluid flow and fluid leaks and report findings.

- a. The refrigerant level should be correct before starting the leak check.
 - b. To prevent unnecessary venting of refrigerant, EPA-recommended methods (e.g. hot water and/or electric blankets) must be used to pressurize the vessels.
 - c. In order to use EPA-recommended methods, certain conditions must be met: The isolation valves on the chilled water and condenser water lines must shut off the circulation completely. The temperature of the equipment room should be 70°F or higher.
 - d. Access connections to the condenser water and chilled water circuits must be provided (customer's responsibility). If these conditions cannot be met, the refrigerant must be removed and the vessel pressurized, using dry nitrogen and a trace gas. This additional procedure is outside the scope of this agreement.
- 4) Calculate and report refrigerant loss.
 - 5) Measure pressure drop across refrigerant core driers and report deficiencies.
 - 6) Check the operation of the lubrication system and report deficiencies.

Lubrication System:

- 1) Pull oil sample for spectroscopic analysis.
- 2) Check oil for acid content and discoloration. Make recommendations to the County Representative based on the results of the test.
- 3) The Contractor shall prepare a trend report summarizing the last sample and all other samples, to be submitted following each sample taken.
- 4) The report shall include a graph of data visually depicting trends in oil condition and content.
- 5) Measure and record the oil pump voltage and amperage.
- 6) Verify the operation of the oil heater. Measure amps and compare readings with the watt rating of the heater.
- 7) Change the oil filter.
- 8) Check compressor oil level and/or pressure on refrigerant systems having oil level and/or pressure measurement means. Report any deficiencies.
- 9) Test vent piping of all relief valves for presence of refrigerant to detect improperly sealed release valves. Report any deficiencies.
- 10) Repair minor leaks as required (e.g. valve packing and flare nuts).
- 11) Open one end of the condenser barrel and brush/punch condenser tubes for cleanliness.
- 12) Visually inspect condenser tubes for cleanliness.
- 13) Check vanes for free and smooth operation and report deficiencies.
- 14) Check mechanical linkages for wear and report deficiencies.
- 15) Perform vibration analysis by a certified technician and provide detailed written report on results with recommendations.
- 16) Clean and inspect strainer(s) if applicable.

Purge Unit

- 1) Check purge unit controls for proper operation.
- 2) Check and clean purge drum as required, per manufacturer's recommendations.
- 3) Clean the condenser coil.
- 4) Check for evidence of build up or fouling on the heat exchange surfaces. Restore as needed to ensure proper operation
- 5) Clean strainers or replace filters as required per manufacturer's

- recommendations.
- 6) Check the purge compressor assembly for leaks as required per manufacturer's recommendations.
- 7) Check the purge unit for proper operation and report deficiencies.

Controls and Safeties

- 1) Verify all settings in the electronic control panel.
- 2) Inspect the control panel for cleanliness. Clean as needed.
- 3) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connection as needed.
- 4) Verify the operation of the vane control system.
- 5) Verify the working condition of all indicator/alarm lights and LED/LCD displays.
- 6) Verify the operation of the oil sump temperature control device.
- 7) Test high condenser pressure safety device. Calibrate and record setting.
- 8) Test low evaporator temperature safety device. Calibrate and record setting.
- 9) Test low oil pressure safety device. Calibrate and record setting.
- 10) Test high motor temperature safety device. Calibrate and record.
- 11) Test operation of chilled water pump and condenser water pump starter auxiliary contacts.

Motor and Starter

- 1) Clean the starter and cabinet.
- 2) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed.
- 3) Check and calibrate overloads. Record trip times and trip amps.
- 4) Check condition of the contacts for wear and pitting or other signs of damage and report deficiencies.
- 5) Check contactors for free and smooth operation and report deficiencies.
- 6) Check the mechanical linkages for wear, security, and clearances and report deficiencies.
- 7) Meg the motor and record reading.
- 8) Verify the operation of the electrical interlocks.

C. Chillers, Centrifugal (3-year cycle)

Eddy Current Testing – Evaporators and Condensers

Note: Needs to be completed during the initial year of Contract award.

- 1) Brush and perform eddy current testing on all condenser and evaporator tubes with approach greater than two-degree Fahrenheit prior to performing eddy current testing.
- 2) Test shall include detection of various kinds of defects including inner/outer diameter (ID/OD) pitting, cracking, erosion, wall loss, inlet end erosion, vibration damage, and effect at supports, cracks at tube sheet expansion roll, wear, and erosion.
- 3) Provide a detailed written report on condition of condenser/evaporator including any necessary repairs to owner.

10. RECIPROCATING AIR COOLED CHILLERS

A. Quarterly Services: Reciprocating Air-Cooled Chiller

- 1) Check the general operation of the unit.
- 2) Inspect for refrigerant leaks and report results. Test vent piping of all relief valves for presence of refrigerant to detect improperly sealed relief valves.
- 3) Check condenser coils for damage or evidence of leaks (air cooled chillers). Clean condenser coils with a non-acid cleaner. Follow manufacturer instructions for application. Report any deficiencies.

- 4) Log the operating temperatures, pressures, voltages, and amperages.
- 5) Check the operation of the control circuit and report deficiencies.
- 6) Perform visual inspection of the lubrication system and report deficiencies.
- 7) Check the operation of the motor(s) and starter(s) and report deficiencies.
- 8) Check tightness of the motor terminal connections at the Load and Line side and report deficiencies. Tighten connections as needed. Check the torque specifications.
- 9) Analyze the recorded data. Compare the data to the original design conditions.

B. Annual Services: Reciprocating Air-Cooled Chiller

All quarterly services listed above, plus:

General Assembly

- 1) Inspect for proper fluid flow and fluid leaks and report results.
- 2) Measure pressure drop across refrigerant core driers and report deficiencies.
- 3) Pull refrigerant sample for spectrographic analysis for contaminants (oil, water, acid), using approved containers.
- 4) Calculate and report refrigerant loss rate.
- 5) Repair minor leaks as required (e.g. valve packing, flare nuts).
- 6) Visually inspect condenser coils for cleanliness.
- 7) Inspect fan blades, housing, and belts for tension and cleanliness. Clean and adjust if applicable.
- 8) Check the operation of the lubrication system and report deficiencies.

Lubrication System:

- 1) Check compressor oil level and/or pressure on refrigerant systems having oil level and/or pressure measurement means. Report deficiencies.
- 2) Pull oil sample for spectrographic analysis. Test oil for acid content and discoloration. Make recommendations to County Representative based on the results of the test.
- 3) Prepare a trend report summarizing the last sample and all other available samples, to be submitted following each sample taken. The report shall include a graph of data visually depicting trend in oil condition and content.
- 4) Verify the operation of the compressor case heater/oil heater. Measure and record amps and compare reading with the watt rating of the heater.
- 5) Lubricate the condenser fan bearings, if applicable.
- 6) Clean coils with a non-acid cleaner, follow manufacturer instructions
- 7) Clean and inspect strainer(s) if applicable.

Controls and Safeties

- 1) Inspect the control panel for cleanliness and clean as needed.
- 2) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed.
- 3) Verify the working condition of all indicator/alarm lights, if applicable.
- 4) Test the low water temperature control device. Calibrate and record setting.
- 5) Test the low evaporator pressure safety device. Calibrate and record setting.
- 6) Test the oil pressure safety devices(s). Calibrate and record setting, if applicable.
- 7) Check programmed parameters of the unit interface control panel, if applicable.
- 8) Check and verify operation of compressor unloaders.

Motor and Starter

- 1) Clean the starter and cabinet
- 2) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed.
- 3) Check condition of the contacts for wear and pitting and other signs of damage and report deficiencies.
- 4) Check the contactors for free and smooth operation and report deficiencies.
- 5) Check and calibrate overloads. Record trip times and trip amps.
- 6) Meg the compressor motor(s) and record readings.
- 7) Verify the operation of the electrical interlocks.
- 8) Measure voltage and record. Voltage should be nominal voltage $\pm 10\%$.

11. AIR COOLED SCREW AND SCROLL CHILLERS

A. Quarterly Services: Air Cooled Screw Chillers

- 1) Check the general operation of the unit.
- 2) Inspect for proper fluid flow and fluid leaks and report results. Test vent piping of all relief valves for presence of refrigerant to detect improperly sealed relief valves.
- 3) Check condenser coils for damage or evidence of leaks. Clean condenser coils with a non-acid cleaner. Follow manufacturer instructions for application. Report any deficiencies.
- 4) Perform visual inspection of the lubrication system and report deficiencies.
- 5) Log the operating temperatures, pressures, voltages, and amperages.
- 6) Check the operation of the control circuit and report deficiencies.
- 7) Check the operation of the motor(s) and starter(s) and report deficiencies.
- 8) Check tightness of the motor terminal connections at the Load and Line side and report deficiencies. Tighten connections as needed. Check the torque specifications.
- 9) Analyze the recorded data. Compare the data to the original design conditions.

B. Annual Services; Air Cooled Screw Chillers All quarterly services listed above, plus:

General Assembly

- 1) Calculate and report refrigerant loss rate and report to the County.
- 2) Pull refrigerant sample for spectrographic analysis. Check for moisture, contaminants, and etc. utilizing approved containers.
- 3) Repair minor leaks as required (e.g. valve packing, flare nuts).
- 4) Measure pressure drop across refrigerant core driers and report deficiencies.
- 5) Inspect fan blades, housing, and belts for tension and cleanliness. Clean and adjust if applicable.
- 6) Check the operation of the lubrication system and report deficiencies.

Lubrication System

- 1) Check compressor oil level and/or pressure or refrigerant systems having oil level and/or pressure measurement means. Report any deficiencies.
- 2) Test oil for acid content and discoloration. Make recommendations to the County Representative based on results of test.
- 3) Replace oil filter.
- 4) Verify operation of crankcase oil heater. Measure amperage and compare to heater rating.
- 5) Lubricate condenser fan bearings.

Controls and Safeties

- 1) Inspect the control panel for cleanliness and clean as needed.
- 2) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed.
- 3) Verify the working condition of all indicator/alarm lights, if applicable.
- 4) Test the low water temperature control device. Calibrate and record setting.
- 5) Test the low evaporator pressure safety device. Calibrate and record setting.
- 6) Test the oil pressure safety devices(s). Calibrate and record setting, if applicable.
- 7) Check programmed parameters of the unit interface control panel, if applicable.
- 8) Check and verify operation of compressor unloaders and electronic expansion valve.

Motor and Starter

- 1) Clean the starter and cabinet
- 2) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed.
- 3) Check condition of the contacts for wear and pitting and other signs of damage and report deficiencies.
- 4) Check the contactors for free and smooth operation and report deficiencies.
- 5) Meg the compressor motor(s) and record readings.
- 6) Verify the operation of the electrical interlocks.
- 7) Measure voltage and record. Voltage should be nominal voltage $\pm 10\%$.

12. COOLING TOWERS

A. QUARTERLY SERVICES: COOLING TOWER

- 1) Check the general condition of the tower.
- 2) Clean entire tower structure, i.e. basins, strainers (upper and lower), spray nozzles/eliminators, and tower casing as needed.
- 3) Verify proper water level in the basin.
- 4) Verify proper operation of the water level control device.
- 5) Verify smooth operation of the fan(s), motors and belts if applicable.
- 6) Perform vibration sensor operation verification (if applicable).
- 7) Verify proper operation of the bypass valve(s), if applicable.
- 8) Mechanical:
 - a. Inspect drive and coupling for condition and security.
 - b. Inspect fan assembly for condition, security, and clearances (e.g. blade tip clearance).
 - c. Check the sheaves and pulleys for wear and alignment if applicable. Adjust as necessary.
 - d. Check the belts for tension, wear, cracks and glazing if applicable. Replace belts as necessary.
- 9) Lubrication:
 - a. Lubricate fan and motor bearings per manufacturer's recommendations.
 - b. Check gear box oil level. Inspect gear box for leaks, correct deficiencies
 - c. Clean gear box and replace oil as needed.

B. ANNUAL SERVICES; COOLING TOWER All quarterly services listed above, plus: General Assembly

- 1) Disassemble all screens and access panels for inspection.

- 2) Inspect the conditions of the slats, if applicable and report deficiencies.
- 3) Inspect the condition of the tower fill and report deficiencies.
- 4) Inspect the condition of the support structure, including structural fasteners (screw, bolts, etc.) and report deficiencies.
- 5) Inspect the condition of the basins (upper and lower) and/or spray nozzles and report deficiencies.
- 6) Check fan belts for tension, blades, and housing. Clean and replace fan belts as applicable.
- 7) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed. Check torque specifications.

Motor and Starter

- 1) Clean the starter and cabinet.
- 2) Check condition of the contacts for wear and pitting or other signs or damage and report deficiencies.
- 3) Check contactor(s) relays, and operating safety controls for free and smooth operation and report deficiencies.
- 4) Check and record motor voltage and current.
- 5) Meg the motor and record reading.
- 6) Check the condition and operation of the basin heater contactor(s), as applicable.

13. PUMPS AND PUMP MOTORS

A. Quarterly Services: Pump & Motor Inspection and Testing

- 1) Verify smooth operation of the pump.
- 2) Check motor and pump alignment. Re-align as necessary.
- 3) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed. Check torque specifications.
- 4) Check and record suction and discharge pressures.
- 5) Exercise suction and discharge valves.
- 6) Check valves and piping for leaks and report deficiencies.
- 7) Check for leaks on the mechanical pump seals, if applicable.
- 8) Verify proper drip rate on the pump seal packing, if applicable.
- 9) Check for loose or frayed electrical connections and report deficiencies.
- 10) Check motor voltage and current. Record readings.
- 11) Inspect the coupling for wear.
- 12) Lubricate the motor and pump bearings as necessary.

B. Annual Services; Pump & Motor Inspection and Testing Complete all quarterly services, plus:

General Assembly

- 1) Check motor shaft and pump shaft and pump drive for wear or problems due to poor alignment or poor bearing seating. Report any deficiencies.
- 2) Instrument check for pump alignment by either dial indicator or laser alignment and report deficiencies.
- 3) Verify that the shaft guard is in place and tight, if applicable.
- 4) Verify water flow through the pump.
- 5) Clean and inspect strainer(s) if applicable.

- 6) Check insulation, vibration isolators, and flexible connectors for integrity.
- 7) Clean pressure gauge port openings and nipples.

Motor and Starter

- 1) Clean the starter and cabinet.
- 2) Meg the motor. Record readings.
- 3) Check the condition of the contacts for wear and pitting or other signs of damage, if applicable. Report any deficiencies.
- 4) Check the contactors for free and smooth operation.
- 5) Verify proper volts and amps. Record readings.
- 6) Check and calibrate overloads. Record trip times and trip amps.

14. AIR HANDLERS (DX)

A. Quarterly preventative maintenance: Air Handler (DX)

- 1) Replace and date filters.
- 2) Check belts for condition, alignment and tension, adjust or replace if necessary.
- 3) Check controls for proper operation; adjust if necessary. Lubricate linkages/controls as per manufacturer specifications.
- 4) Check fan shaft and bearings for excessive play; report deficiencies.
- 5) Check motor mounts for condition and adjust if necessary.
- 6) Check motor bearings for excessive play; report deficiencies.
- 7) Clean and flush drain pan, drain line, p-trap, and coil for biological growth. Add correctly sized time released algae control pan strips. Notify the County if any abnormality or corrosion is found. Ensure condensate exits to final termination point, i.e. floor drain outside the building.
- 8) Inspect evaporator coils cleanliness and fin condition, report findings.
- 9) Check unit for excessive vibration or noises; adjust as necessary.
- 10) Check fan wheels for condition and balance (visually).
- 11) Check inlet vanes (where applicable) and adjust/repair as necessary.
- 12) Activate duct heaters for a minimum of fifteen (15) minutes during the month of October. Contractor shall notify the Facilities Quality Assurance Coordinator for fire alarm deactivation and reactivation before beginning procedure.
- 13) Check condition of electrical wiring and operation of electrical components.

B. Annual preventative maintenance shall include, all quarterly services, plus:

- 1) Check all coils for refrigerant or water leaks. Repair or replace if necessary.
- 2) Pressure clean all coils. Do not use acid cleaners.
- 3) Check all wiring for condition, tighten all connections, and replace any wiring showing abnormal wear and tear, so as to minimize an unnecessary repair. Replacements will be at no additional cost to the County.
- 4) Meg motor and record readings.
- 5) Check contactor for condition; and report deficiencies.
- 6) Check starter for proper operation.
- 7) Check operating voltages and currents.
- 8) Check air flow pressure drop on coil against manufacturer specifications; correct if out of spec.
- 9) Replace fan belts.
- 10) Clean fan wheel.

15. AIR HANDLER CONDENSING UNITS

A. Quarterly preventative maintenance: Air Handler Condensing Unit

- 1) Check operation of the unit.
- 2) Check condition of electrical wiring and operation of electrical components.
- 3) Check operation of the control circuit and unloaders.
- 4) Check for proper refrigerant and oil levels.
- 5) Verify all fans operate properly in response to controller.
- 6) Clean coils with water only. (i.e. flush the coils with garden hose, not pump sprayer)
- 7) Verify crankcase heater operation.
- 8) Provide a written report of work completed and indicate detected deficiencies.

B. Annual preventative maintenance shall include, all quarterly services, plus:

- 1) Check condition of control contacts for wear, pitting and erosion.
- 2) Tighten motor terminals and control panel terminals.
- 3) Inspect safeties for proper mounting.
- 4) Place the unit in operation.
- 5) Measure voltage, amperages, operating temperatures, superheat, subcooling and refrigerant pressures of the unit. Check for voltage imbalance. Record results.
- 6) Verify system thermostat controller operates properly.
- 7) Lube all motors and bearings as required.
- 8) Inspect all fan brackets and motor supports for proper integrity.
- 9) Clean coils with a non-acid cleaner. Follow manufacturer instructions for application. Self-rinsing coil cleaners are not acceptable and will not be used.
- 10) Check external interlocks for proper operation.
- 11) Inspect unit cabinet for proper integrity.
- 12) Log operating conditions.

16. AIR HANDLING UNITS (Chilled Water)

A. Quarterly Services: AHU

- 1) Replace and date filters.
- 2) Check the general operation of the unit. notify the County if abnormality found.
- 3) Inspect the unit for cleanliness.
- 4) Inspect the wiring and connections for tightness and signs of Overheating and discoloration. This includes wiring to the electric heat, if applicable. Tighten connections as needed. Check torque specifications. notify the County if abnormality found.
- 5) Clean and flush drain pan, drain line, p-trap, and coil for biological growth. Add correctly sized time released algae control pan strips. Notify the County if any abnormality or corrosion is found. Ensure condensate exits to final termination point, i.e. floor drain outside the building.
- 6) Inspect evaporator coils cleanliness and fin condition, report findings.
- 7) Clean coils with water only. (i.e. flush the coils with garden hose, not pump sprayer)
- 8) Check belts for condition, alignment and tension, adjust or replace if necessary.
- 9) Lubricate the fan shaft and motor bearings, if applicable.
- 10) Check controls for proper operation; adjust if necessary. Lubricate linkages/controls as per manufacturer specifications.
- 11) Check fan shaft and bearings for excessive play; notify the County if abnormality found.
- 12) Check motor mounts for condition, adjust or notify the County if abnormality found.
- 13) Check motor bearings for excessive play; notify the County if abnormality found.
- 14) Check unit for excessive vibration or noises; correct as necessary.

- 15) Check blower wheels for condition and balance (visually); notify the County if abnormality found.
- 16) Inspect drive sheaves for condition, notify the County if abnormality found.

B. Annual Services; AHU All quarterly services plus:

General Assembly

- 1) Inspect the fan wheel and shaft for wear and clearance.
- 2) Inspect fan blades, housing, and belts for tension. Tighten as needed.
- 3) Check the sheaves and pulleys for wear and alignment.
- 4) Check air filter fit and housing seal integrity. Correct as needed.
- 5) Check control box for dirt, debris and/or loose terminations. Clean and tightened as needed.
- 6) Check integrity of all panels on equipment. Replace fasteners as needed to ensure proper integrity and fit/finish of equipment.
- 7) Replace air handler belts.
- 8) Verify tight bolts, set screws, and locking collars. Tighten as needed. Report any deficiencies.
- 9) Clean drain pan, drain line, p-trap, and coil for biological growth. Clean condensate drain pan and add correctly sized time released algae control pan strips.
- 10) Clean coils with a non-acid cleaner. Follow manufacturer instructions for application. Self-rinsing coil cleaners are not acceptable and will not be used.
- 11) Verify smooth fan operation.
- 12) Log operating conditions after system has stabilized.
- 13) Clean and inspect chilled water strainer if applicable.
- 14) Check for proper damper operation, plus any automatic valves and turning vanes.

Electric Heater Internal/Duct Heater External, if applicable.

- 1) Inspect the wiring and connections for tightness and signs of overheating and discoloration and report deficiencies. Tighten connections as needed.
- 2) Inspect heater elements to be sure element is free of dirt and foreign matter and report deficiencies.
- 3) Check the thermal cutout safeties on electric heaters, if applicable.
- 4) Check the heater step/stage controller for proper operations, if applicable.

- 5) Cycle heater and verify all heater elements are operational by recording amperage draw. Record deficiencies.

Motor and Starter

- 1) Clean the starter and cabinet
- 2) Check the condition of the contacts for wear and pitting or other signs of damage. Report any deficiencies
- 3) Check the contactors for free and smooth operation.
- 4) Meg the motor and record readings.

17. EXHAUST FANS

A. Quarterly preventative maintenance: Exhaust Fans

- 1) Check unit for proper operation, noises/vibration.
- 2) Check drive belts, adjust or replace as necessary.
- 3) Lubricate fan shaft bearings.
- 4) Lubricate motor bearings if applicable.
- 5) Clean fan wheel and fan housing.

B. Annual preventative maintenance shall include, all quarterly services, plus:

- 1) Check fan blade/wheel for condition. notify the County if abnormality found.
- 2) Check unit for vibration and noises, notify the County if abnormality found.
- 3) Check fan dampers for proper operation, repair as necessary.
- 4) Lubricate fan dampers if applicable.
- 5) Check guards and make sure unit is properly secured.
- 6) Check all electrical wiring for condition; notify the County if abnormality found.
- 7) Measure and record operating current and voltage.
- 8) Replace belts.

18. BOILERS

A. Quarterly preventative maintenance: Boilers

- 1) Inspect and adjust burner for proper operation, notify the County if abnormality found.
- 2) Test and adjust low water cutoff valve for proper operation, notify the County if abnormality found.
- 3) Test and adjust pressure relief valve for proper operation, notify the County if abnormality found.
- 4) Blow down, test and adjust low water cutoff and feed water controls, notify the County if abnormality found.
- 5) Check unit for water, air, steam and fuel leaks; notify the County if abnormality found.
- 6) Check sequence and operation of flame safeguard controls, notify the County if abnormality found.
- 7) Check operating and high limit controls for correct setting, reset if necessary.

- 8) Check modulating motor for proper operation, adjust if necessary.
- 9) Lift safety/relief valves with at least 70% rated pressure, adjust if necessary, notify the County if abnormality found.
- 10) Blow down gauge cocks and try cocks to confirm glass water level.
- 11) Check and test boiler blowdown valve for leaks and proper opening and closing.
- 12) Lubricate motor and shaft bearings per manufacturer's recommendations.
- 13) Rotate lead/lag boilers.

B. Annual preventative maintenance shall include, but not be limited to the following:

- 1) Test the following (as applicable):
 - a. Firing rate
 - b. Fuel/air ration
 - c. CO₂
 - d. CO
 - e. Smoke test to determine combustion efficiency.
 - f. Adjust burner air/fuel controls as required in order to obtain proper combustion.
- 2) Secure and drain boiler.
- 3) Open fire side and water side.
- 4) Check heating surfaces and water side for corrosion, pitting, scale, blisters, bulges, soot accumulation, calcium oxide accumulation, iron oxide accumulation, and other signs of deterioration. Repair as necessary per manufacturer's specifications.
- 5) Check refractory for cracks and other signs of deterioration.
- 6) Brush clean all boiler tubes.
- 7) Clean or replace water column sight glass.
- 8) Clean fire inspection glass.
- 9) Disassemble, clean and inspect low water cutoff controls.
- 10) Reassemble boiler and low water cutoff controls and install new gaskets.
- 11) Check blowdown valve packing and lubricate.
- 12) Replace fuel filters. Check fuel systems for leaks.
- 13) Replace fuel nozzles.
- 14) Check electrical wiring to burner controls, blower and other components.
- 15) Check condition of flue pipe, damper and exhaust stack, notify the County if abnormality found.
- 16) Clean burner fan wheel and air damper.
- 17) Inspect and clean oil burner gun and ignition assembly, where applicable.
- 18) Check operation of all control switches.
- 19) Remove flame safeguard scanner and send to certified repair facility for cleaning, testing and calibration. Loaner flame safeguard scanner to be installed by contractor if needed.
- 20) Check all burner linkages for wear, notify the County if abnormality found.
- 21) Tighten all linkage set screws.
- 22) Check gas valves for leakage (where test cocks are provided).
- 23) Perform pilot turn down test.
- 24) Check operation of low water cutoff and feed controls.
- 25) Check settings and test all operating and limit controls.

- 26) Refill boiler.
- 27) Perform hydrostatic test (to 150 psig).
- 28) Test safety/relief valves after start up (full pressure test).

NOTE: The County will certify boiler (open & closed) with a third-party contractor.

19. VARIABLE FREQUENCY DRIVE

A. Quarterly Services: VFD Maintenance

- 1) Check drive for overall condition of unit and for proper operation.
- 2) Check for unusual noise and vibration and report findings.
- 3) Remove all dirt and dust that has penetrated the interior or accumulated on the processor boards.
- 4) Check with County representative for operation deficiencies.
- 5) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies.
- 6) Clean air filter.

B. Annual Services: VFD Maintenance

- 1) Record and report abnormal conditions, measurements taken, etc.
- 2) Review customer logs with the customer for operational problems and trends.
- 3) Clean the heat sink.
- 4) Inspect wiring and connections for tightness and signs of overheating and discoloration and report deficiencies.
- 5) Visually inspect panel for loose or damaged parts or wiring; also check for any accumulation of dirt and/or moisture.
- 6) Verify proper operation of the unit and report deficiencies.
- 7) Verify proper DC bus voltage.
- 8) Inspect, clean and verify operation of ventilation fans.
- 9) Review programming (time-outs, delays, auto resets, etc.)

20. REFRIGERANT MONITOR SYSTEM

Annual Services: Refrigerant Monitor System Maintenance

- 1) Calibration will be performed by qualified technician familiar with the instrument and its operation.
- 2) Perform calibration of monitor per manufacturer's calibration procedure.
- 3) Provide detailed written report of recorded calibrations readings referencing manufacturer's standards.
- 4) Check sampling ports lines for blockage and replace inlet filters is needed.
- 5) Test for proper operation and verify alarms are functioning.
- 6) Review control panel for proper operation and recorded fault histories.
- 7) Review operational deficiencies with County Representative.

21. WATER TREATMENT – GENERAL INFORMATION

A. Covered systems and equipment

This scope of work covers all condenser water ("open loop" and "closed loop") systems, and all cooling chilled water ("closed loop") systems. The treatment

program is designed to control; a) biological growth in the evaporative cooling systems; b) corrosion of, and deposition onto, the metal portions of the evaporative cooling systems; and c) corrosion of metal in the closed water systems.

B. General Description

The work to be performed is to supply all water treatment chemicals, as required at no additional cost for preventative maintenance services, for the length of the contract; provide all the professional consultant services associated with the water treatment program and provide all necessary testing, supplies, reagents and apparatus which are a prerequisite to any recommendations of treatment. This includes; delivery to the site all of the chemicals required for treatment; the necessary service calls, including on-site and laboratory water analysis, to determine the required treatment; and inspection and adjustment of automatic chemical feed equipment to ensure the recommended treatment is achieving the required results.

Chemicals to be used:

- 1) Scale and corrosion inhibitors will be of a dual purpose in that they control both scale and corrosion.
- 2) Organic dispersant will be a liquid incorporated into the cooling tower program to provide for maximum heat transfer efficiency.
- 3) Tower biocides (EPA registered biocides) will be used to control biologicals in the open loop systems.
- 4) Closed system treatment (hot or cold water) shall be adequately treated for corrosion control with due consideration for scale control. The treatment shall protect ferrous metals from rust or corrosion. System chemistry specifications shall be per industry standards and shall be provided to the County during the first thirty (30) days of contract.
- 5) All chemicals used must be compatible with the other chemicals used in the same system, must meet all Federal and State regulations concerning its shipment and use, and shall be covered by a Material Safety Data Sheet (MSDS) provided to the County prior to or concurrent with receipt on site. Chemicals shall be stored in/over appropriate spill containment devices.

C. Performance Specification

The water treatment will prevent the buildup of scale or algae, and adherent mineral deposits, on the heat transfer section of the equipment being treated. Once the systems are cleaned and inspected, and Contractor and County agree on the conditions relative to the start of the program, should the equipment become scaled when the chemicals are being applied as recommended, as determined by the County or the County's representative, the Contractor agrees to furnish the chemicals and labor necessary to descale equipment promptly at no additional cost to County. More specifically:

- 1) Sufficient scale inhibitor shall be applied to prevent calcium carbonate or calcium phosphate scale.
- 2) Specific deposit control agents shall be applied to prevent and minimize suspended scale deposition on the chillers.
- 3) The total colony forming units (CFU) of LBD in the cooling tower water system shall never exceed 100 organisms per milliliter per the Occupational Safety & Health Administration (OSHA) Section II: E. Water Sampling Guidelines. Test cooling tower water samples for levels of Legionnaires' disease bacteria (LDB) monthly per OSHA Section II: A. Cooling Tower, Evaporative Condensers, and Fluid Coolers. Follow the Association of Water Technologies (AWT) action plan for cooling tower operations to reduce the CFU count to less than 10 per milliliter.
- 4) Algae growth shall be minimized and no heavy accumulations of algae shall exist in condenser water system.
- 5) Closed system inhibitor program must provide both corrosion and scale control.

The Contractor shall:

Furnish the test reagents, kits and equipment as required, to allow the following tests to be run by County's personnel at no cost for duration of the Contract.

- pH
- Conductivity
- Inhibitor Residual
- Nitrite

Provide all necessary log forms to record daily tests and measurements by County's personnel. Log forms should list dates of inspections and cleanings, water-quality test results, LDB outbreak investigations, and maintenance.

Provide MSDS's for all chemicals anticipated to be used.

Provide racks and corrosion coupons of mild steel and copper for corrosion control program.

D. Corrosion Control

The Contractor will install corrosion coupon racks in those systems not presently equipped for corrosion coupon studies. Existing corrosion coupon racks shall be examined by the Contractor to ascertain their proper installation. Any corrosion coupon rack(s) believed by the vendor to be not properly installed shall be reported to the appropriate Facilities Quality Assurance Coordinator or his designated representative for examination and correction if necessary.

The Contractor shall install, remove and submit to an independent laboratory, corrosion coupons. The laboratory results/analysis shall be reviewed with the Facilities Quality Assurance Coordinator or his designated representative.

The intent of this water treatment program is to prevent the buildup of adherent mineral deposits on the heat transfer surfaces of the equipment being treated,

however periodic descaling with inhibited acids shall not be considered as meeting this specification and shall not be used. Any use of inhibited acids may result in immediate termination.

22. WATER TREATMENT – SPECIFICATIONS

A. Monthly Services: Open Loop Systems

- 1) Review County-maintained logs of daily operational checks and readings.
- 2) Review the previous service visit reports to determine developing difficulties or trends.
- 3) Inventory all treatment chemicals, test reagents, and kits and reorder as necessary.
- 4) Instruct County's personnel in any subsequent changes required prior to next visit.
- 5) Note any conditions that could harm the equipment that are mechanical in nature and need to be addressed and report to County's representative and Contractor's maintenance supervisor.
- 6) Provide a written service visit report to County's representative and discuss any changes or questions prior to leaving the site.
 - a. Check the chemicals in the feed tank and adjust as required.
 - b. Check dissolved solids content in the water.
 - c. Check the pH of the water being treated.
 - d. Check the bleed rate.
 - e. Check the chemical content in the system being treated.
 - f. Check the conductivity controller operation.
 - g. Adjust the chemical feed pump as required.
 - h. Check for algae.
- 7) Provide information on all test procedures used (after initially provided, provide only additions, changes, or deletions).
- 8) Remove all empty chemical drums and pails.

B. Annual Services: Open Loop System

- 1) Clean the chemical feed pump suction strainer.
- 2) Disassemble and clean the bleed line strainer.
- 3) Disassemble and clean the flow-through sensor.
- 4) Disassemble and clean the check valve assembly.
- 5) Check chemicals in the feed tank and adjust as required.
- 6) Check dissolved solids content in the water.
- 7) Check the pH of the water being treated.
- 8) Check the bleed rate.
- 9) Check the chemical content in the system being treated.
- 10) Verify proper operation of the conductivity control device.
- 11) Adjust the chemical feed pump as required.
- 12) Check for algae.
- 13) Add chemicals as required (chemicals included).
- 14) Check for scale and corrosion.
- 15) Test corrosion coupons by independent laboratory. Provide detailed written report with findings and corrective actions if required.

C. Quarterly Services: Closed Loop Systems

- 1) Check the chemical content in the system being treated.
- 2) Add chemicals as required (chemicals included) EXCEPTION: Chemicals will not be included if there has been a major water leak in the system. Major leaks will be treated as repairs.

23. THERMAL STORAGE SYSTEMS (TES)

Tanks should have water samples tested once a year for the presence of glycol which would indicate leakage between the heat transfer surfaces. Ice bank controls, sampling tubes, sensors, filling stations and motors need to be tested, calibrated and cleaned once a year. Glycol solutions need to be tested for proper concentrations as per equipment specifications twice a year. Glycol solutions will be provided by the contractor as quoted service. Provisions must be made by the contractor to reduce any down time which would interfere with normal ice building operations during peak and off-peak hours.

24. GLYCOL STATION

Conduct annual inspection of the piping and tubing to insure proper discharge of the glycol solution. The Y-strainer and check valve should be periodically checked for clogging and wear. Gear Pump: The pump should be checked for proper operation. If any pump/motor noises, leaks or changes in operation are detected, the pump should be removed and examined by a certified technician. Lubrication: Carbon bearing motors do not require lubrication, however sleeve bearing motors do. Follow the lubrication instructions that are provided on the motor label. If there are no instructions, lubricate once a year with 10 to 15 drops of SAE 20 weight non-detergent or electric motor oil. Do not over lubricate.

25. PLATE HEAT EXCHANGER

A. Quarterly Services:

- a. Back-flushing refer to manufacturer IOM.
- b. Provide before and after performance report of pressure and temperature delta.

B. Annual Services:

- a. Cleaning in place refer to manufacturer IOM.

C. Disassembled cleaning:

- a. quoted service recommendation: every 3 years as needed.

26. BUILDING AUTOMATION SYSTEMS (BAS)

The Contractor shall report quarterly inspection and preventive maintenance services of the Building Automation Systems (BAS) for Brevard County facilities. Brevard County Facilities maintains and backup the BAS server through the IT Department. The Contractor shall furnish software support, materials, equipment, and incidentals, to comply with the service requirements under this section. The Contractor shall perform all updates for BAS and related equipment as a quoted service. The Contractor shall perform the following preventative maintenance task according to the BAS and equipment manufacturer's requirements.

A. Communication:

Contractor shall verify there is communication between the sites front end controller, onsite unit controllers/devices and the server. Check that graphics and

shortcut(s)/link(s) are working and properly configured on the screen. Identify and correct programming errors.

B. System Analysis and Review:

Contractor shall review the building automation systems to minimize software problems and identify and correct programming errors, failed points, points in alarm and points that have been overridden. Overridden points shall be released back into auto mode. Verify that the system and controllers are following the design sequence of operation and make necessary changes to correct identified issues or changes to the sequence as directed per Facilities Quality Assurance Coordinator. The Contractor shall meet with on-site operators, review the system, and address any questions or concerns.

C. Trend Logs:

Contractor shall evaluate trend logs to ensure that the equipment is correctly maintaining temperature and humidity set points and is following building occupied/unoccupied schedules, in addition to shutting down as per the BAS schedule for each building.

D. Control Loop Tuning Proportional Integral Derivative (PID)

Contractor shall verify the operation of control loops for devices such as valves, dampers, actuators, etc., to ensure they minimize overshooting and oscillatory behavior. If necessary, make manual changes during the heating or cooling season to accommodate current comfort requirements. In addition, review and modify any changes that were made in previous months, and adjust to accommodate changing seasonal conditions.

E. Variable Air Volume (VAV) Front-End Analysis:

Contractor shall analyze the VAV system from the front end to ensure that the spaces served by the VAV boxes are controlled within tolerance while maintaining a comfortable environment for building occupants.

F. Sensor Calibration:

Contractor shall periodically check and calibrate sensors to prevent mechanical cooling and heating systems to run prematurely, resulting in excessive energy use.

G. Point-to-Point Verification:

Contractor shall test and evaluate each connected, monitored (input) or controlled (output) automation point and verify its proper readout at the BAS workstation. This point-to-point system verification ensures the connected automation points are reading and functioning properly to maintain the appropriate application set points.

H. Software:

Contractor shall verify all controllers are operating using the most recent available firmware. Contractor shall install firmware and service pack updates for existing software when available.

I. Component Replacement:

Contractor shall inspect components and parts and recommend repair or replacement on an as-needed basis per manufacturer recommendations. Parts for which product data indicates there is a defined operating life expectancy shall be

tracked and replaced at the time intervals recommended by the manufacturer. For HVAC applications these will typically include, but are not limited to: humidity sensors, carbon monoxide sensors, carbon dioxide sensors, and UPS batteries. Parts and components shall be approved prior to purchase and installation. The Contractor shall provide a quote for these parts and components for approval by the Facilities Quality Assurance Coordinator. The Contractor shall provide confirmation that part was used in the appropriate County equipment. The County will only reimburse for parts that were approved prior to use. The County reserves the right to furnish parts and materials if deemed in the best interest by the County.

J. Operation and Support Services:

Contractor shall provide back-up assistance for the facilities' existing programs and operating schedules on an as needed basis.

27. REPAIR SERVICES: COORDINATION AND RESPONSE TIMES

The Contractor shall submit a Quote and perform repair services **only when directed** by the County Representative. The Contractor shall coordinate the delivery of services with the County's Representative or authorized designee.

A. Emergency Service

- 1) The Contractor shall provide emergency repair services twenty-four (24) hours per day, seven (7) days a week to include holidays.
- 2) The Contractor shall arrive on the job site within two (2) hours of verbal or written notification by the Facilities Quality Assurance Coordinator for emergency work requests to assess repair requirements. The Contractor shall notify the Facilities Quality Assurance Coordinator if repair cannot be completed at that time and shall perform temporary repairs where possible.
- 3) The Contractor shall prepare and submit a cost estimate for the work to be performed no later than eight (8) hours from site visit for emergency work requests.
- 4) Emergency work/repair shall be corrected immediately, with the verbal authorization (Emergency Purchase Order) from an authorized County Representative.
- 5) Failure to obtain written authorization may result in denial of payment. When an emergency is deemed to have existed, written authorization of the work ordered shall be submitted to the Facilities Quality Assurance Coordinator within twenty-four (24) hours. If the emergency occurred during the weekend or holiday, written authorization shall be submitted on the first workday after completion of the emergency service work/repair. Costs associated with such emergency work/repair shall be submitted within twenty-four (24) hours to the Facilities Quality Assurance Coordinator for approval.

The Contractor shall be required to submit the final invoice to the Facilities Division inbox at facilities.accounts@brevardfl.gov

B. Non-Emergency – Repair Services

- 1) For non-emergency work, the Contractor shall respond by visiting the work site within twenty-four (24) hours after notification from the Facilities Quality Assurance Coordinator. The Contractor visit the site with the Facilities Quality Assurance Coordinator to assess the extent of the work requirements and mutually agree on the types and quantities of items required for the work. The Contractor shall submit the estimate within three (3) calendar days after visiting the site for routine work request.
- 2) The Contractor's estimate will be evaluated to determine if the scope has been clearly and accurately understood, prices are according to Proposal Price Sheet, and supporting data provided.
- 3) The estimate provided by the Contractor shall be firm, no increases will be permitted unless unforeseen circumstances arise and the increase is approved by the County Representative. The Contractor shall notify the Facilities Quality Assurance Coordinator of any unforeseen conditions as soon as they become apparent and gain approval from the Facilities Quality Assurance Coordinator to proceed. Failure to gain approval prior to performance may result in non-payment by the County.

The Contractor shall provide a new itemized estimate inclusive of the unforeseen cost (if applicable) and a written explanation of the reason for the increase to the Facilities Quality Assurance Coordinator for approval. The County will issue a change order for approved unforeseen cost.

- 4) The estimate shall be itemized to include each technician's title, estimated number of hours and unit price for labor, total material cost, and any other cost related to the work. The subcontractor shall be identified on the quote form and the scope of work shall be clearly defined for approval.
- 5) The County reserves the right to enter into negotiations with the Contractor whenever it deems that negotiations will be in the best interest of the County. These negotiations may increase or decrease the original scope of work. Upon completion of negotiations, a new estimate shall be prepared by the Contractor and submitted to the County Representative for approval.
- 6) The Contractor shall not begin work until the County accepts the estimate and issues the Contractor a Purchase Order for the work.
- 7) The County and the Contractor will mutually agree on scheduling for the work to be completed. The County will have the final authority on scheduling of repairs.
- 8) The Contractor shall submit an invoice for services performed within forty-eight (48) hours of completion.
 - a. The Contractor shall not charge for time spent at job site preparing quotes/estimates. On day of service, billable time starts at the arrival at the actual job site of the equipment to be serviced or work is to be performed.

C. Labor and Material

The Contractor shall provide all labor and materials necessary for perform services under this contract.

- 1) Chargeable hours for repairs begin upon arrival at the actual job site of the work to be performed and does not include time spent checking in at the jobsite.
- 2) Diagnostic services shall be billable per the Additional Services rate listed on the Proposal Price Sheet. Diagnostic charge includes labor hours only. This does not include travel time, time spent going through security check points, or time spent preparing quote documents.

The Contractor shall ensure that diagnostic services are performed by qualified staff. The County will not be held responsible for nor shall the Contractor invoice for diagnostic errors. Should the Contractor receive payment, such payment for errors on the part on the Contractor shall be reimbursed in full by the Contractor to the appropriate County department.

- 3) The Contractor shall coordinate the job site delivery and placement of materials required for completion of the job with the County's representative.
- 4) The Contractor may be reimbursed for the cost of material plus up to a 20 % markup. Contractor shall indicate no more than a 20% mark-up on Proposal Price Sheet.
- 5) Material quality shall be commercial grade to accomplish the service work satisfactorily, as specified in the given scope for each job. The County reserves the right to furnish materials to the Contractor and set the standard of quality for materials for a given job. All materials used shall be manufactured by a company acceptable to the County.
- 6) The Contractor shall ensure any applicable warranty for any/all parts purchased are to the benefit of Brevard County. The Contractor shall provide copies of the manufacturer's warranty information for material and parts purchased under this Contract. Contractor shall be responsible for all communication and coordination with the manufacturer for parts and materials purchased under this Contract at no additional cost to the County.
- 7) Service vehicles shall be fully stocked with basic materials and standard parts so that response to repair calls can be accomplished without returning to the shop, and materials are available for scheduled services. The Contractor will not receive compensation for time spent gathering materials and/or parts under any circumstances.
- 8) The Contractor shall provide a copy of the supplier's invoice for all materials ordered along with the Contractor's invoice for services.
- 9) The Contractor shall be responsible for shipping charges. Shipping costs (less mark-up) may be authorized for material when the County Representative determines that they are necessary.

- 10) Materials shall remain the property, liability, and responsibility of the Contractor until they are incorporated into the work and the work is accepted by the County. No additional charges will be accepted by the County for the required delivery, handling and on-site storage of materials needed for the job. This includes fencing or other equipment needed to secure contract materials.
- 11) Consumable supplies are defined as those commonly used supplies that are consumed during the performance of work. Consumable supplies shall include, but are not limited to, items such as wiring, wire nuts, tape, wire connectors, etc. The Contractor shall account for these items in the unit prices on the Proposal Price Sheet and not invoice for these items separately.

D. Subcontractors and Equipment Rental

Repair projects requiring services that are not specific to HVAC services or equipment, as outlined herein but necessary for project completion, may be subcontracted with prior approval from the County.

Prior approval of subcontracted services and specialty equipment rental is necessary for reimbursement under this contract. The Contractor shall provide a description of the service(s) to be subcontracted and the equipment for rental with the quote for approval by the County. These services shall be reimbursed as a pass-through at cost with back-up documentation. Equipment rental shall be reimbursed only for the timeframe utilized in completing the service. General use of subcontractors shall not be reimbursable unless the County determined that the situation necessitates the need for an outside contractor/subcontractor, pre-approval is strictly required.

Service tickets and third-party invoices shall be submitted for verification. The Contractor's failure to obtain written approval prior to service and/or submit back-up documentation for subcontracted services and equipment rental may result in non-payment by the County.

E. Unforeseen Cost

The County shall reimburse the Contractor for approved unforeseen charges. These charges shall be reimbursed at cost, with proper invoice from a third party. Reimbursable unforeseen costs may include, but are not limited to: cost for express shipping as requested by the County, permits needed for equipment upgrade/replacement, and tax payable on parts used in County owned equipment. The Contractor shall obtain prior approval written from the Facilities Quality Assurance Coordinator for all other unforeseen charges.

28. TRAINING – AS NEEDED

The Contractor shall provide training for maintenance personnel on HVAC and related equipment system maintenance referenced on this contract. The Contractor shall provide training on existing equipment and new equipment which may be placed in service during the term of the contract. Training shall include troubleshooting, repairs, and maintenance of equipment. Water treatment training shall include chemical testing, application, and control of the treatment program. Cost for training shall be per the line item on the Proposal Price Sheet.

29. **INVOICING REQUIREMENTS**

- A. Upon delivery and acceptance of service, associated costs shall be submitted by invoice to the Facilities inbox at facilities.accounts@brevardfl.gov. The Contractor shall reference the contract number and the appropriate purchase or delivery order number on all invoices.

At minimum, an invoice shall contain the following information:

- Delivery order number
- Date of delivery
- Destination of delivery or service location
- Total labor
- Itemized list of materials or services rendered
- Quantities, prices, (both unit price and total), terms and any other charges contained in the delivery or purchase order
- Applicable sales tax should be listed separately
- Markdown/mark-ups shall be listed as a line item on the invoice
- Approved shipping charges shall be listed separately from the materials and supplies.

- B. PM, repairs, and diagnostic services shall be invoiced separately. Invoices shall itemize labor and parts cost per contract pricing.
- C. The Contractor shall provide a separate service ticket for each work day for repair work and supporting documents with all invoices for verification of actual labor hours and parts used on the job. Each service ticket shall be signed and dated by the County Representative each day as acknowledgement of work performed. The Contractor shall submit complete documentation to include the name of the County Representative who requested the work, and confirmation that the work was completed.
- D. Markups or markdowns shall be applied only to price for parts. Price for parts shall not include sales tax and shipping charges in the calculation for markups and markdowns.
- E. The County will review invoices for required information. The County will have the authority to reject invoices based on improper invoice format and lack of supporting documents.
- F. The Contractor shall not invoice the County for any repairs not accepted by the County and diagnostic errors on the part of the Contractor. Should the County receive such invoices, they will be rejected.

SUPPLEMENTAL INFORMATION

1. **SECURITY AND IDENTIFICATION**

- A. All costs for background investigations shall be Contractor's responsibility. The County will have the right to request any additional investigative background information including, but not limited to, the employment record, Right-To-

Know records, training records, payroll records, position for which hired including site location of any personnel assigned to perform the services. The Contractor shall furnish, in writing, such information to the extent allowed by law, prior to commencement of services. The County reserves the right to conduct its own investigation of any employee of the Contractor.

- B. Background Checks for the Contractor's staff must be approved by the County prior to working in any County facility. Contractors are responsible for obtaining the necessary forms for background checks and submit it to the Facilities Service Support Manager.

For security purposes and to maintain privacy when submitting FDLE Background Checks via e-mail the subject line of the email must contain the following language:

EXEMPT

Due to the time required to process background checks, the Contractor should allow 2-3 weeks turn-around time. A County Representative will inform the contractor of their Background Check results.

Upon Background Check approval, the Contractor's staff shall go to the Brevard County Facilities Division located at 2725 Judge Fran Jamieson Way, Bldg A, Viera, FL 32940 with a State of Florida I.D. or Driver's License to obtain their Brevard County photo I.D. badge.

- C. Contractor personnel shall be required to complete the following minimum screening procedures:

A state of residency and national fingerprint-based record check shall be conducted for all contract personnel and rechecked every two years for employees who have direct access to the County facilities.

1. If a record of any kind is found, building access for that employee shall be delayed pending review of the criminal history record information. The Contractor will be notified as to the pending delay.
2. When identification of an employee with a criminal history has been established by fingerprint comparison, said criminal history will be reviewed to determine whether the employee will be granted access.
3. A Contractor employee found to have a criminal record consisting of felony conviction(s) will be disqualified, and denied access.
4. A Contractor employee will also be denied access on the basis of confirmation that arrest warrants are outstanding for said employee.
5. Facilities Division will maintain a list of Contractor personnel who have been authorized access to the County facilities.
6. A Contractor's employee with a record of misdemeanor offense(s) may be granted access if it is determined that the nature or severity of the misdemeanor offense(s) do not warrant disqualification. The

decision of the Sheriff's Office shall be final.

- D. Contractor's employees will not be allowed to work in Brevard County facilities without completed and approved background investigations.
- E. Upon termination or transfer of any employee of the Contractor working under this contract, the Contractor shall immediately notify the County's Representative, in writing, of such termination and return said employee's Brevard County photo I.D. badge to the Facilities Support Service Manager.
- F. The Contractor shall report the arrest of any employee working under the terms of this Contract to the County's Representative within twenty-four (24) hours of the arrest or knowledge of the arrest. It shall be subject to the approval of the County whether the employee shall continue to work at County locations within this Contract.
- G. The Contractor shall remove from County premises any of his employees who, in the opinion of the County's Representative, is not performing the services in a proper manner or does not comply with the rules and regulations of the County. The Contractor shall in no way, interpret such removal to require dismissal or other disciplinary action of the employee. The County's Representative will request that anyone suspected of working under the influence of alcohol or controlled substances be removed from the workplace. The Contractor shall establish, implement and maintain procedures and controls to ensure that their employees comply with all applicable provisions of the contract and all site rules and practices of the County
- H. The Contractor shall not use employees of any temporary employment agency to supplement his work force in County buildings for any reason. Only Contractor employees shall be used to perform the required services of this contract unless otherwise approved, in writing, by the County's Representative.
- I. The Contractor shall prevent its employees from tampering with any owned items of County employees or County-owned property, or entering into any unauthorized area unless required in the performance of the services outlined herein.
- J. Contractor personnel are required to wear uniforms and employer identification badges displaying their company name to adequately identify them as company staff. The contractor shall ensure that all of its employees are clean, neat and appropriately attired during performance of the services.
- K. The Contractor shall ensure all employees prominently wear the ID badge on the front of his or her uniform at all times while on County premises.
- L. Access to a site must be coordinated through the County's Representative.
- M. Sixty (60) days prior to each Contract renewal or contract end, the Contractor's Brevard County photo ID badge will be inventoried by the Facilities Support Service Manager. At that time, the Contractor will be advised of any missing ID cards. If any ID Cards are missing, the Contractor will be charged a

\$10.00 fee per each missing ID badge.

2. SPECIAL CONDITIONS FOR WORKING AT THE DETENTION CENTER

The following are specific conditions and rules that must be followed while providing services at the Brevard County Detention Center.

- A. All Contractor employees shall carry a valid ID at all times.
- B. The Contractor shall provide a list of all employees that will be working inside the jail. A full criminal history shall be run on each employee by the Brevard County Sheriff's Department (BCSO) at no cost to the Contractor. No Contractor employee will be allowed to work inside the jail if they are on active probation, home confinement, parole or have been arrested within the last five (5) years or have been arrested for any crime involving violence, drugs or theft. The Contractor employee list shall include:
 - 1. Employee's Full name
 - 2. Employee's date of birth
 - 3. Employee's Race/Sex
 - 4. Employee's Social Security Number
 - 5. Employee's Driver's License number
- C. Only authorized employees of the Contractor shall be allowed to work at jail. WORK RELEASE INMATES ARE NOT AUTHORIZED TO WORK ON ANY JAIL PROJECT.
- D. Contractor's employee shall wear their Contractor issued ID on the collar of their shirt at all times while on the Corrections compound.
- E. If an ID is lost, the Contractor's employee shall report it immediately to their escort officer.
- F. In the event of an emergency, the Contractor's employee shall report it to the nearest Corrections staff member. They will contact 911.
- G. The Contractor's employees shall follow direction of the escort officer at all times.
- H. The Contractor's employees shall not bring tobacco or tobacco products inside any jail or on top of any roof or within any jail fence line.
- I. The Contractor's employees shall not bring or wear hats or sunglasses inside any facility.
- J. The Contractor's employees shall not bring any cell phones inside the facility unless authorized by BCSO.
- K. Contractor vehicles shall have the windows rolled up and be locked at all times and parked in only pre-authorized areas.
- L. The Contractor shall ensure that during breaks, if a Contractor's employee

leaves an area, all tools must be removed.

- M. All Contractor tools will be inventoried going into and out of a facility. Contractor shall ensure that employees take in only what is needed to perform the services.
- N. There shall be no exposed piping upon the completion of work. Contractor shall conceal piping with a stainless-steel cover made specifically for this purpose.
- O. At the end of each workday, the Contractor shall ensure that all tools and debris are collected. The Contractor shall conduct an inspection of all areas to ensure all tools are accounted for.
- P. No illegal drugs or drug paraphernalia are allowed in the compound.
- Q. No weapons, guns or ammunition are allowed in the compound.
- R. The Contractor shall ensure that no inmate interaction occurs. The Contractor's employees shall not talk to or give or receive anything from an inmate, including cigarettes.
- S. The Contractor shall only use storage areas approved at the beginning of the project, unless otherwise permitted during a project by Corrections.

3. TERMINATION OF CONTRACT FOR CAUSE

The County shall have the right at any time and at all times to terminate this Contract for cause, and it is agreed that the violation by the Contractor of any covenant or provision contained in the Contract, or the failure or refusal of Contractor to abide by or carry out any covenants or provision of this Contract, shall be and constitute sufficient cause for which the County may terminate this Contract. In the event the County shall elect to terminate this Contract for cause, the County shall notify the Contractor thereof in writing and shall therein specify the cause for such termination and the date that such termination shall be effective, whereupon the Contractor shall (1) vacate the facility on or before said date, and (2) to remove the Contractor's employees and property from the facility, return all keys, badges, access cards issued to the Contractor by Brevard County on or before said date. The Contractor shall have no further rights and the County shall have no further obligation to the Contractor, pursuant to this Contract subsequent to the date that the County terminates this Contract for cause.

4. TERMINATION OF CONTRACT WITHOUT CAUSE

The County and Contractor shall have the right at any time and at all times to terminate this Contract without cause, upon written notice of such termination not less than sixty (60) days prior to the date that such termination shall be effective. In the event the County shall elect to terminate this Contract without cause, the County shall notify Contractor thereof in writing and shall therein specify the date (not earlier than sixty (60) days after the date of delivery of said written notice by the County to the Contractor) on which this Contract shall terminate. Upon receipt of such written notice the Contractor agrees (1) to vacate the facility on the contract termination date specified in said written notice, return any keys, security access cards and badges used to access facilities, and (2) to remove Contractor's employees and property from the facility on the contract termination date specified in said written notice. The Contractor agrees to abide by and carry out all covenants and provisions of this Contract until the date of termination specified in the aforesaid written

notice of termination of this Contract without cause. The Contractor shall have no further rights, and the County shall have no further obligation to the Contractor, pursuant to this Contract subsequent to the date of termination of this Contract as specified in said written notice. The Contractor shall be entitled to payment of all undisputed charges incurred for authorized and approved work under this Contract.

5. INSURANCE REQUIREMENTS

The vendor providing services under this agreement will be required to procure and maintain, at their own expense and without cost to the County, until final acceptance by the County of all products or services covered by the purchase order or contract, the following types of insurance. The policy limits required are to be considered minimum amounts:

General Liability Insurance policy with a \$ 1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this contract, "X-C-U" hazards, and Errors & Omissions.

Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a \$ 1,000,000 combined single limit for each occurrence.

Workers' Compensation and Employers Liability Insurance covering all employees of the vendor and subcontractors, as required by law.

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the vendor shall also be protected by a Professional Liability Insurance Policy in the amount of \$1,000,000 per claim.

In the event the contract involves services related to construction projects the vendor shall also procure and maintain a Builders Risk Insurance Policy or Installation Floater with loss limits equal to the value of the construction project.

In addition to the above, Specialty Insurance policies covering specific risks of loss (including but not limited to, for example; Longshore coverage, Crane and Rigging, Inland Marine, etc.) may be required by Brevard County Insurance and Risk Management. Any additional specialty insurance coverage requirement will be dictated by the specific goods, products or services provided under the subject contract and insurance underwriting standards, practices, procedures or products available in the commercial insurance market at the time of the contract inception. The Vendor is required to procure and maintain all such specialty coverage in accordance with prudent business practices within the Vendors industry.

The vendor shall have five (5) days to provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this contract. The certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured (a waiver of subrogation in lieu of additional insured status on the workers compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the vendor under the terms of the contract. Sub-Contractor's insurance shall be the responsibility of the vendor.

6. HOLD HARMLESS AND INDEMNIFICATION

The Contractor shall assume full responsibility for and shall indemnify the County for any and all loss or damage of whatsoever kind and nature to all County property which is in its custody or under its control for service under this contract resulting in part from the negligent act or omission of the Contractor, and its subcontractors, or employee, agent, or representative of the Contractor. The parties agree that specific consideration has been exchanged for this indemnification and hold harmless provision.

The County shall be held harmless by the Contractor against any and all claims for and related in any way to bodily injury, sickness, disease, death, personal injury, damages to property of any kind (loss of use of any property or assets resulting therefrom), schedule delay claims of any kind, including, but not limited to loss of efficiency or productivity, arising out of or resulting from the performance of the products or services for which the County is contracting hereunder, to the extent caused by the negligent, reckless, intentional, or willful wrongful acts or omissions of the Contractor, or any of its agents, employees, or subcontractors.

The Contractor agrees to fully indemnify the County and pay the costs of the County, including, but not limited to, reasonable fees for attorneys selected by the County, for all claims described in the hold harmless clause above. Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy. This indemnification shall survive the termination of this Contract. The County's indemnity and liability obligations shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes, as may be amended. Nothing in this Contract is intended to inure to the benefit of any third party for the purposes of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing contained in this section is intended to nor shall it constitute a waiver of sovereign immunity by the County.

7. PROTECTION OF PROPERTY

The Contractor shall at all times guard from damage or loss to property of the County or other vendors or contractors and shall replace or repair any loss or damage unless such is caused by the County, other vendors or contractors. The County may withhold payment or make such deductions, as it might deem necessary to insure reimbursement for loss or damage to property through negligence of the Contractor or agents.

8. RIGHT TO AUDIT RECORDS

The County and its auditors shall be entitled to audit the books and records of the Contractor to the extent that such books and records relate to the performance of this Contract. Said records shall be made available, upon request, for audit purposes to Brevard County and its auditors. Such books and records shall be maintained by the Contractor for a period of five (5) years from the date of final payment under this Contract and any extensions/renewals unless a shorter period is otherwise authorized in writing.

9. FEDERAL TAX ID NUMBER

The Contractor shall provide the County with its Federal Tax ID Number.

10. **ATTORNEYS FEES**

In the event of any legal action to enforce the terms of this Contract each party shall bear its own attorney's fees and costs.

11. **GOVERNING LAW**

This Contract shall be governed, interpreted and construed according to the Laws of the State of Florida.

12. **VENUE**

Venue for any legal action by any party to this Contract to interpret, construe or enforce the terms of this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida and ANY TRIAL SHALL BE NON-JURY.

13. **JOINT USE**

This Agreement is available for joint use by other governmental agencies including the State of Florida, its agencies, other counties, cities, municipalities and school districts, at their own discretion. Each agency selecting to use this Agreement shall do so independently of any other governmental entity. Each agency shall be responsible for its own purchases.

14. **ACCEPTANCE AND PAYMENT**

Acceptance of the work by Contractor shall be upon completion of the work to the satisfaction of the County, which approval shall not be unreasonably withheld. The County shall remit payment upon acceptance in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, et seq.

15. **PUBLIC RECORDS**

The County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, and all other applicable statutes. If the materials provided by the Contractor do not fall under a specific exemption under Florida or federal law, materials provided by the Contractor to the County will have to be provided to anyone making a public records request. It will be the Contractor's duty to identify the information it deems is exempt/confidential under Florida or federal law, and identify the statute, by number, that exempts such information.

Should any person or entity make a public records request to the County requiring the the County to allow inspection or provide copies of records for which the Contractor maintains are exempt/confidential, it shall be the Contractor's obligation to provide the County, within twenty-four (24) hours (not including weekends and legal holidays), of notification by the County to the Contractor of the request, of the specific exemption or confidentiality provision so the County will be able to comply with the requirements in Chapter 119, Florida Statutes.

Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Contractor to the County which the Contractor maintains are exempt or confidential from such inspection/production as a public record, then the Contractor shall hire and compensate attorney(s) who shall represent the interests of the County in defending such action. The Contractor shall also pay any costs to defend such action and shall pay any costs and attorney fees which may be awarded pursuant to Section 119.12, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE FACILITIES DEPARTMENT: Mary Bowers, mary.bowers@brevarfl.gov, (321) 633-2050, 2725 Judge Fran Jamieson Way, A207, Viera, FL 32940.

16. **EMPLOYMENT VERIFICATION**

The Contractor shall comply with Section 448.095, Florida Statutes, and:

- a. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract; and
- b. shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by the subcontractor during the Contract term; and
- c. shall obtain an affidavit stating that any subcontractor(s) it enters into a contract with, does not employ, contract with, or subcontract with an unauthorized alien; and
- d. agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records are made available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.

Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach.

Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

17. **SEVERABILITY**

If any of the provisions contained in this Contract are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Contract shall be construed as if such invalid, illegal, unenforceable provision had never been contained herein.

18. **COUNTERPARTS**

This Contract may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute one in the same.

19. **MODIFICATIONS**

This Contract shall not be modified or altered unless done so in writing by both parties and signed by each party's respective authorized representative.

20. **ACCEPTANCE AND ENTIRE AGREEMENT**

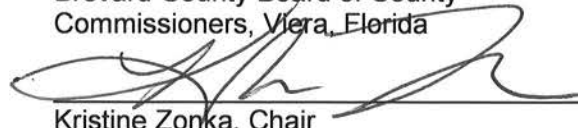
This instrument embodies the entire Agreement between the County and **TRANE, U.S., Inc.** (Contractor). The undersigned have caused this Contract to be duly executed by their respective authorized representative and shall be effective the date of last signature below. Any modifications or amendments must be in writing and agreed to by all parties.

ATTEST:



Rachel Sadoff, Clerk of the Court

Brevard County Board of County
Commissioners, Viera, Florida

 7/5/22

Kristine Zonka, Chair Date
As approved by the Board: August 3, 2021

CONTRACTOR:

TRANE, U.S., Inc.



06/22/2022
Date

BY: Erik Smedal, Area General Manager, Central Florida

Printed Name & Title

EXHIBIT “B”

Description of Services

Trane Scheduled Service Agreement

(24 pages to follow)



HVAC SYSTEMS SCHEDULED SERVICE AGREEMENT

Trane Office

Trane U.S. Inc.
2301 Lucien Way, Suite 430
Maitland, FL 32751

Trane Representative

Allison Asa
Cell: (321) 228-8871
Office: (407) 660-1111

Proposal ID

7001845

Service Contract Number**Contact Telephone Number for
Service**

(407) 660-1111

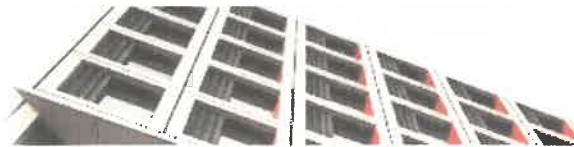
**Quote Number / Co-op Contract
Number****Company Name**

Kissimmee City Of
104 N Alaska Ave,
Kissimmee, FL 34741-3474 U.S.A.
ROBERT MASIKU

Sites Included:

Kissimmee City Hall
Kissimmee Civic Center
Kissimmee Police Department
Kissimmee Public Works/Svc Ctr
Oak Street Youth Center
Kissimmee 911
Kissimmee Public Safety Training

August 1, 2022



EXECUTIVE SUMMARY

This **Select Service Agreement** includes parts and labor coverage for HVAC equipment repairs under the umbrella of an annual planned maintenance contract. It is the easiest, most affordable and most reassuring way to ensure your HVAC equipment is continuously operating at peak performance levels.

Under this service agreement, you will hand off the responsibilities for planning, scheduling and managing routine maintenance to Trane. Plus, the added repair coverage helps you minimize unplanned downtime and avoid unexpected expenses.

As an HVAC service provider, Trane offers many advantages:

- Confidence that your HVAC equipment is being cared for according to OEM best practices for both frequency and procedures
- Priority service, available 24-hours a day, giving your facility precedence during urgent situations
- Advanced diagnostic technologies, allowing our technicians to analyze system performance more comprehensively, so they can identify and correct a broader set of conditions

Protect your bottom line. Proper maintenance can save an estimated 12 to 18 percent of your budget compared to a run-to-fail approach. This service agreement will help you capture those savings. (*FEMP O&M Guide 2010*)

FOCUSED ON BETTER BUILDINGS

When it comes to service effectiveness, experience matters. No other provider has more experience than Trane.

- 100+ years of system and equipment experience
- 35+ years in building automation systems (BAS)
- 20+ years in energy services

ADDITIONAL SUPPORT

Trane offers a wide range of maintenance and repair services beyond the scope of this service agreement. Ask your Trane representative for details.

ENVIRONMENTAL PRACTICES

Trane procedures for handling refrigerant are compliant with federal and state regulations.

CONSISTENT PROCESSES

All Trane technicians follow documented processes ensuring uniform service delivery.

SAFETY

Trane incident rates (OSHA) are consistently 50 to 70 percent below industry averages.

ASSIGNED TEAM

You will have a consistent group of Trane employees dedicated to your account.



SCOPE OF SERVICES — STANDARD INCLUSIONS

ANY HVAC SYSTEM IS ONLY AS STRONG AS ITS INDIVIDUAL MECHANICAL COMPONENTS.

This service agreement with Trane protects and enhances full system functionality by ensuring that components are well maintained and functioning to OEM standards. And it is tailored to your needs. The following are the standard inclusions of your service agreement:

TRANE SCHEDULED MAINTENANCE

Factory authorized Trane service technicians perform all periodic maintenance, following OEM standards, to keep HVAC and BAS equipment running optimally and prevent unplanned downtime. Trane assumes all responsibilities for planning, scheduling and managing routine maintenance on Trane HVAC equipment and other brands.

Advantages:

- Trust one assigned maintenance team for all HVAC equipment brands
- Receive consistent service outcomes through proprietary Six Sigma maintenance procedures
- Save money compared to ad-hoc service calls



Implementation:

- Technician visits are scheduled in advance
- Service is completed during normal business hours
- Basic supplies, such as grease, cleaning solvents and wiping cloths, are included in the annual fee

EMERGENCY ON-SITE RESPONSE

With Emergency On-site Response, Trane responds to emergency service requests by immediately dispatching a technician to the facility. This emergency response will be billable at the time and material rates.

Advantages:

- Gain reassurance that BAS emergencies will be handled promptly
- Minimize risks to your business caused by unplanned BAS downtime

Implementation:

- **Trane Service will respond to emergency service request by immediately dispatching a technician to the facility.**





REFRIGERANT MANAGEMENT

US Environmental Protection Agency (EPA) has placed in effect more stringent regulations on refrigerant management and reporting in 2020. Section 608 of the Clean Air Act prohibits the knowing release of refrigerant during the maintenance, service, repair, or disposal of air-conditioning and refrigeration equipment. The EPA requires proper refrigerant management practices and documentation by owners and operators of refrigeration and air-conditioning systems, all servicing technicians and others. ***The Clean Air Act requires owners to maintain records of refrigerant usage and leak rates for each air-conditioning or refrigeration appliance with refrigerant charge greater than 50 lbs. These records must be maintained for 3 years and be directly accessible if audited by the EPA.*** This brief summary of Section 608 of the Clean Air Act is provided for informational purposes only and is not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to the application of Section 608 of the Clean Air Act to your business.



All Trane Technicians are Universally certified (the highest level possible) to service, manage, and document your refrigerant and are knowledgeable of applicable law and time constraints to repair leaks. Trane Technicians track all refrigerant in all equipment serviced regardless of appliance size (supports accurate fugitive emissions reporting where applicable).

When a customer has ***all*** their refrigerant work performed by a Trane technician - Trane Refrigerant Management software maintains complete record of refrigerant transactions and appliance leak rates. Refrigerant reports provided by Trane will contain the information to satisfy EPA record keeping requirements.

Advantages:

- Real time reporting of refrigerant leak rate informs proactive decisions
- Stay in compliance with state and federal regulations
- Provide acceptable documentation to authorities during audits
- Maintain company environmental standards and provides data for managing any reporting needs
- Detect potential refrigerant leaks before equipment damage occurs

Implementation:

- Technicians collect refrigerant information for covered equipment during onsite visits
- Refrigerant data and technician activity are entered into the Trane Refrigerant Management System
- Refrigerant Usage Reports are generated according to your needs



TRANE LABORATORY ANALYSIS

Trane Laboratory Analysis tests system fluids for contaminants and other physical characteristics and trends. Conditions indicating sub-optimal HVAC system performance are identified before issues become critical.

Advantages:

- Head off equipment failures and unplanned downtime
- Identify long-term equipment performance trends
- Gain definitive insights through Trane experience and expertise

Implementation:

- Samples collected by Trane technicians during maintenance as stated in this agreement
- Laboratory analysis of oil, absorption solutions and refrigerants
- Consistent testing according to Trane best-practice protocols year after year

SEQUENCE OF OPERATION VERIFICATION

Sequence of Operation Verification assures the system is operating as intended. It helps manage the multiple system inputs and confirms set-up accuracy.

Advantages:

- Maintain comfort, reliability and uptime
- Prevent premature failure of the system or components
- Identify anomalies that waste energy

Implementation:

- Discover unreleased manual overrides
- Correct scheduling discrepancies
- Evaluate appropriate set points





SOFTWARE UPDATE AND TRAINING

Software Updates and training provide software installation and maintenance, along with information and demonstrations on new features and functionality. This agreement includes annual upgrades for all contract customers. Any unplanned software upgrades above and beyond the annual upgrade will be brought to the customer attention and billable at time and material upon customer approval.

Advantages:

- Proactively maintain BAS system software to each new version
- Gain new and improved capabilities as technology progresses
- Know how to gain the full advantages of system enhancements
- Keep BAS software compatible with current operating systems and browsers
- Mitigates risk against potential cyber security vulnerabilities within the BAS software



Implementation:

- Proactive notification of software releases
- Installation and administration of software and/or firmware upgrades
- Comprehensive system and database backup and archiving
- Operator coaching and/or up-front discussion on new features

CONTROL LOOP TUNING

Operators sometimes adjust system settings to accommodate immediate comfort requirements. Control Loop Tuning makes sure the correct settings are in place during seasonal transitions.

Advantages:

- Prepare for hotter or colder weather
- Assure continuous occupant comfort

Implementation:

- Review for manual changes
- Restore optimal settings for the heating/cooling season
- Verify operation of mechanical loop components



SCOPE OF SERVICES SUMMARY

SERVICES INCLUDED	LABOR AND MATERIALS FOR COVERED EQUIPMENT
X	Scheduled Maintenance Labor
X	Scheduled Maintenance Parts and Materials
	Repair Labor: Repairs will be performed on covered equipment during Trane regular business hours
	Repair Parts and Materials
	Overtime Repair Labor for Emergency Failures (outside Trane regular business hours)
X	Refrigerant Replacement <u>ZERO</u> % of Charge per unit per year
X	Refrigerant Usage Reporting
STANDARD INCLUSIONS	
X	Trane Scheduled Maintenance
X	Emergency On-Site Response (BILLABLE)
	Repair Coverage
	Specified System Repair Coverage
X	Refrigerant Management
X	Trane Laboratory Analysis
X	Sequence of Operation Verification
X	Software Update



HVAC EQUIPMENT COVERAGE

Kissimmee City Hall

The following "Covered Equipment" will be serviced at Kissimmee City Hall:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Tracer SC	1	Trane	BM	NS-4724368	

Description

System Analysis and Review (Service 6)

Quantity Per Term

8

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Air-Cooled Chiller, Scroll Compressors	1	Trane	CGAM120F2P	U17C60789	CH-2
Air-Cooled Chiller, Scroll Compressors	1	Trane	CGAM120F2P	U17C60790	CH-1

Description

CGAM Annual Inspection (Service 2)

CGAM Quarterly Inspection (Service 3)

Quantity Per Term

2

6

Kissimmee Civic Center

The following "Covered Equipment" will be serviced at Kissimmee Civic Center:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Tracer SC	1	Trane	BM	NS-4342999	

Description

System Analysis and Review (Service 6)

Quantity Per Term

8



Kissimmee Police Department

The following "Covered Equipment" will be serviced at Kissimmee Police Department:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Tracer Summit Accessories	1	Trane	BMTX001AAA	U06D70018	Controls

Description

System Analysis and Review (Service 6)

Quantity Per Term

8

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Air-Cooled Chiller, Scroll Compressors	1	Trane	CGAM130F2E	U11K25638	

Description

CGAM Annual Inspection (Service 2)

CGAM Quarterly Inspection (Service 3)

Quantity Per Term

2

6

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Performance Climate Changer	1	Trane	CSAA025UAL	K17F51099	

Description

M Series Annual (Service 4)

M Series Quarterly (Service 5)

Quantity Per Term

2

6

Kissimmee Public Works/Svc Ctr

The following "Covered Equipment" will be serviced at Kissimmee Public Works/Svc Ctr:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Tracer Summit Building Management	1	Trane	BMTX001AAA	E06D70018	

Description

System Analysis and Review (Service 6)

Quantity Per Term

8

Oak Street Youth Center

The following "Covered Equipment" will be serviced at Oak Street Youth Center:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Tracker Panels	1	Trane	TRACKER CO	NS-2272204	

Description

Annual Tracker Inspection (Service 1)

Quantity Per Term

8



Kissimmee 911 Facility

The following "Covered Equipment" will be serviced at Kissimmee 911 Facility:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Compressor-Condensing Units - Generic	1	Trane	4TWA4048A3	21194CFJ4FF	

Description	Quantity Per Term
Condensing Unit Annual Inspection (Light Commercial Less then 20 Tons) (Service 7)	2
Condensing Unit Quarterly Inspection (Light Commercial Less then 20 Tons) (Service 8)	6

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Handlers - Generic	1	Trane	TEM4A0C48S	211244W1M3V	AHU1

Description	Quantity Per Term
Voyager Cooling Pre-Season Annual Start Up (Service 15)	2
Voyager Quarterly Inspection (Service 16)	6

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Compressor-Condensing Units - Generic	1	Trane	TTA09043AA	21131125YA	CU-2
Compressor-Condensing Units - Generic	1	Trane	TTA09043AA	21151847YA	CU-3

Description	Quantity Per Term
Odyssey Cooling Pre-Season Annual Start Up (Service 10)	2
Odyssey Quarterly Inspection (Service 12)	6

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Handlers - Generic	1	Trane	TWE09043AA	21163941BA	
Split System Air Handlers - Generic	1	Trane	TWE09043AA	21163948BA	

Description	Quantity Per Term
Odyssey Cooling Pre-Season Annual Start Up (Service 9)	2
Odyssey Quarterly Inspection (Service 11)	6

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Mini Split Ceiling Grid AHU and CU	1	Mitsubishi Electric			

Description	Quantity Per Term
Split System Computer Room Unit Annual Maintenance (Service 13)	1
Split System Computer Room Unit Quarterly Maintenance (Service 14)	3



Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Tracer SC	1	Trane			

Description
System Analysis and Review (Service 6)

Quantity Per Term
8

Kissimmee Public Safety Training

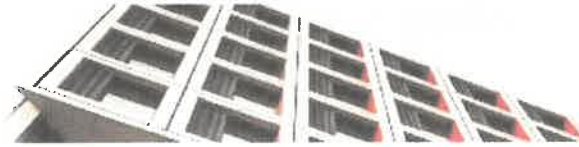
The following "Covered Equipment" will be serviced at Kissimmee Public Safety Training:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Conditioners - Generic	1	Trane	4TWA4036A4	1837416T4F	
Split System Air Conditioners - Generic	1	Trane	4TWA4036A4	19031TJ24F	
Split System Air Conditioners - Generic	1	Trane	4TWA4048A4	18322MXC4F	
Split System Air Conditioners - Generic	1	Trane	4TWA4060A4	180746PS2F	
Split System Air Conditioners - Generic	1	Trane	TEM6A0C36H	19241HAH3V	AHU-2
Split System Air Conditioners - Generic	1	Trane	TEM6A0C36H	19241K2F3V	AHU-3
Split System Air Conditioners - Generic	1	Trane	TEM6A0C48H	19253XLR3V	AHU-1
Split System Air Conditioners - Generic	1	Trane	TEM6A0C60H	192411HL3V	AHU4
Split System Air Conditioners - Generic	1	Mitsubishi Electric US Inc	SUZ-KA09NA	7YP01167	

Description	Quantity Per Term
Split System Air Handler Cooling Pre-Season Annual Maintenance (Includes Condenser) (Service 18)	2
Split System Air Handler Quarterly Maintenance (Includes Condenser) (Service 20)	6

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Handlers - Generic	1	Desert Aire Corp	LCS5212-05	H1940000012	
Split System Air Handlers - Generic	1	Desert Aire Corp	QV10P4E809	26698	DOAS-1

Description	Quantity Per Term
Split System Air Handler Cooling Pre-Season Annual Maintenance (Air Handler Only) (Service 17)	2
Split System Air Handler Quarterly Maintenance (Air Handler Only) (Service 19)	6



SITE COVERAGE

Kissimmee City Hall	101 North Church Street, Kissimmee, FL 34741, United States
Kissimmee Civic Center	201 East Dakin Avenue, KISSIMMEE, FL 34741, United States
Kissimmee Police Department	8 North Stewart Avenue, Kissimmee, FL 34741, United States
Kissimmee Public Works/Svc Ctr	104 North Alaska Avenue, Kissimmee, FL 34741, United States
Oak Street Youth Center	717 North Palm Avenue, KISSIMMEE, FL 34741, United States
Kissimmee Police 911	400 Mabbette St, Kissimmee, FL 34741, United States
Kissimmee Public Safety Training Facility	1701 Jack Calhoun Drive, Kissimmee, FL 34741



PRICING AND ACCEPTANCE

Robert Masiku
Kissimmee City Of
104 N Alaska Ave, PUBLIC FACILITY
Kissimmee, FL 34741-3474 U.S.A.

Trane Service Agreement

This Service Agreement for Building Automation System and equipment consists of the pages beginning with the page entitled "HVAC Systems Select Service Agreement," the consecutively numbered pages immediately following such title page, and includes and ends with the Trane Terms and Conditions (Service) (collectively, the "Service Agreement" or "Agreement"). Trane agrees to inspect and maintain the Covered Equipment according to the terms of this Service Agreement, including the "Terms and Conditions," and "Scope of Services" sections. Trane agrees to give preferential service to Service Agreement Customer over non-contract customers.

Service Fee

As the fee(s) (the "Service Fee(s)") for the inspection and maintenance services described in the Scope of Services section with respect to the Covered Equipment, Customer agrees to pay to Trane the following amounts, plus applicable tax, as and when due.

Contract Year	Annual Amount - All Sites USD	Payment USD	Payment Term
Year 1	61,515.00	15,378.75	Quarter
Year 2	64,590.00	16,147.50	Quarter
Year 3	67,818.00	16,954.50	Quarter
Year 4	71,211.00	17,802.75	Quarter
Year 5	74,774.00	18,693.50	Quarter

☐ Service Fee Discount. A one-time ____ % discount is offered for full payment of one (1) year in advance of the commencement of the Service Agreement. Invoice would be issued at start of the Agreement and is due net 15 days from date of invoice. The discount would be _____ USD if this option is selected. Tax will be calculated based upon the pre-discounted price. This Service Fee discount is for advance payment only under the terms stated in this section and is not applicable to credit card transactions. Please check the box to select this discount option.

In addition to any other amounts then due hereunder, if this Agreement is terminated or cancelled prior to its scheduled expiration, Customer shall pay to Company the balance of any amounts billed to but unpaid by Customer and, if a "Service Project" is included in the Agreement, the Cancellation Fee set forth in "Exhibit A" Cancellation Schedule attached hereto and incorporated herein, which Cancellation Fee represents unbilled labor, non-labor expenses and parts materials and components. Subject only to a prior written agreement signed by Trane, payment is due upon receipt of invoice in accordance with Section 4 of the attached Terms and Conditions.

Term

The Initial Term of this Service Agreement is 2 years, beginning **October 1, 2022** and expiring **September 30, 2024**. However, Trane's obligation under this Agreement will not begin until authorized representatives of Trane and Customer have both signed this Agreement in the spaces provided below.

Following expiration of the initial term on September 30, 2024, this Agreement shall renew automatically for successive periods of 2 years (the "Renewal Term") until terminated as provided herein. If you do not want to renew this Agreement for the Renewal Term, please notify Trane by telephone or by U.S. mail prior to the expiration date set forth in the preceding sentence. If any questions arise regarding this Service Agreement or how to cancel this



Agreement, Trane can be reached either by telephone at (407) 660-1111 or by direct mail addressed to: 2301 Lucien Way, Suite 430 Maitland, FL 32751.

Renewal Pricing Adjustment

The Service Fees for an impending Renewal Term shall be the current Service Fees (defined as the Service Fees for the initial Term or Renewal Term immediately preceding the impending Renewal Term) annually adjusted based on changes to the cost of service. The Service Fees for an impending Renewal Term shall be set forth in the service renewal letter furnished to Customer.

Cancellation by Customer Prior to Services; Refund

If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and if no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer's account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer's right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

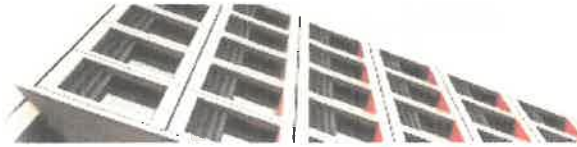
Cancellation by Company

This Agreement may be cancelled during the Initial Term or, if applicable, a Renewal Term for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to the scheduled expiration date and Company will refund to Customer, or credit Customer's account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

COVID-19 National Emergency Clause

The parties agree that they are entering into this Agreement while the nation is in the midst of a national emergency due to the Covid-19 pandemic ("Covid-19 Pandemic"). With the continued existence of Covid-19 Pandemic and the evolving guidelines and executive orders, it is difficult to determine the impact of the Covid-19 Pandemic on Trane's performance under this Agreement. Consequently, the parties agree as follows:

1. Each party shall use commercially reasonable efforts to perform its obligations under the Agreement and to meet the schedule and completion dates, subject to provisions below;
2. Each party will abide by any federal, state (US), provincial (Canada) or local orders, directives, or advisories regarding the Covid-19 Pandemic with respect to its performance of its obligations under this Agreement and each shall have the sole discretion in determining the appropriate and responsible actions such party shall undertake to so abide or to safeguard its employees, subcontractors, agents and suppliers;
3. Each party shall use commercially reasonable efforts to keep the other party informed of pertinent updates or developments regarding its obligations as the Covid-19 Pandemic situation evolves; and
4. If Trane's performance is delayed or suspended as a result of the Covid-19 Pandemic, Trane shall be entitled to an equitable adjustment to the project schedule and/or the contract price.



This Agreement is subject to Customer's acceptance of the attached Trane Terms and Conditions (Service).

CUSTOMER ACCEPTANCE	TRANE ACCEPTANCE Trane U.S. Inc.
Authorized Representative	<u>Allison Asa</u> Submitted By: Allison Asa
Printed Name	Proposal Date: August 1, 2022 Cell: (312) 228-8871 Office: (407) 660-1111 License Number: CMC1249843
Title	<u>Allison Asa</u> Authorized Representative
Purchase Order	<u>Account Manager</u> Title
Acceptance Date	<u>January 5, 2023</u> Signature Date

The Initial Term of this Service Agreement is three (3) years with two (2) renewable one year options, beginning October 1, 2022. Total Contract Amount: \$339,908.00 USD.



TERMS AND CONDITIONS

"Company" shall mean Trane U.S. Inc..

1. Agreement. These terms and conditions ("Terms") are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the following commercial services as stated in the Proposal (collectively, the "Services"): inspection, maintenance and repair (the "Maintenance Services") on equipment (the "Covered Equipment"), specified Additional Work (if any), and, if included in the Proposal, Intelligent Services, Energy Assessment, Energy Performance Solutions, and any other services using remote connectivity (collectively and individually referred to in these Terms as "Energy and Building Performance Services"). **COMPANY'S TERMS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

2. Connected Services. In addition to these terms and conditions, the Connected Services Terms of Service ("Connected Services Terms"), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

3. Acceptance. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to these Terms and Conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's Terms and Conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to perform in accordance with the Proposal and Company Terms and Conditions. If Customer does not reject or object in writing to Company within 10 days, Company's counteroffer will be deemed accepted. Customer's acceptance of performance by Company will in any event constitute an acceptance by Customer of Company's Terms and Conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or Terms and Conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services provided by Company to the date of cancellation.

4. Fees and Taxes. Fees for the Services (the "Service Fees") are as set forth in the Proposal. Except as otherwise stated in the Proposal, Service Fees are based on performance during regular business hours. Charges for performance outside Company's normal business hours shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fees, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with an acceptable tax exemption certificate.

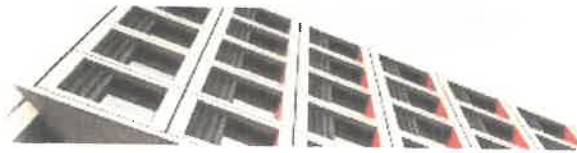
5. Payment. Payment is due upon receipt of Company's invoice. Service Fees shall be paid no less frequently than quarterly and in advance of performance of the Services. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Without liability to Customer, Company may discontinue performance whenever payment is overdue. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing this Agreement.

6. Customer Breach. Each of the following constitutes a breach by Customer and shall give Company the right, without an election of remedies, to suspend performance or terminate this Agreement by delivery of written notice declaring termination. Upon termination, Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead): (a) Any failure by Customer to pay amounts when due; (b) any general assignment by Customer for the benefit of its creditors, Customer's bankruptcy, insolvency, or receivership; (c) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (d) Any failure by Customer to perform or comply with any material provision of this Agreement.

7. Performance. Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances when Company performs the Services. Company may refuse to perform where working conditions could endanger property or put people at risk. Unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines. This Agreement presupposes that all major pieces of Covered Equipment are in proper operating condition as of the date hereof. Services furnished are premised on the Covered Equipment being in a maintainable condition. In no event shall Company have any obligation to replace Covered Equipment that is no longer maintainable. During the first 30 days of this Agreement, or upon initial inspection, and/or upon seasonal start-up (if included in the Services), if an inspection by Company of Covered Equipment indicates repairs or replacement is required, Company will provide a written quotation for such repairs or replacement. If Customer does not authorize such repairs or replacement, Company may remove the unacceptable equipment from the Covered Equipment and adjust the Service Fees accordingly. Customer authorizes Company to utilize Customer's telephone line or network infrastructure to connect to controls, systems and/or equipment provided or serviced by Company and to provide Services contracted for or otherwise requested by Customer, including remote diagnostic and repair service. Customer acknowledges that Company is not responsible for any adverse impact to Customer's communications and network infrastructure. Company may elect to install/attach to Customer equipment or provide portable devices (hardware and/or software) for execution of control or diagnostic procedures. Such devices shall remain the personal proprietary property of Company and in no event shall become a fixture of Customer locations. Customer shall not acquire any interest, title or equity in any hardware, software, processes, and other intellectual or proprietary rights to devices used in connection with the Services on Customer equipment. Company may remove such devices at its discretion. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company.

8. Customer Obligations. Customer shall: (a) Provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; (b) Follow manufacturer recommendations concerning teardown and internal inspection, major overhaul, restoration or refurbishing of the Covered Equipment; unless expressly stated in the Scope of Services statement, Company is not performing any manufacturer recommended teardown and internal inspection, major overhaul, restoration or refurbishing of the Covered Equipment; and (c) Where applicable, unless water treatment is expressly included in the Services, provide professional cooling tower water treatment in accordance with any reasonable recommendations provided by Company.

9. Exclusions. Unless expressly included in the Covered Equipment or the Services, the Services do not include, and Company shall not be responsible for or liable to the Customer for any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from, any of the following: (a) Any guarantee of room conditions or system performance; (b) Inspection, maintenance, repair, replacement of or services for: chilled water and condenser water pumps and piping; electrical disconnect switches or circuit breakers; motor starting equipment that is not factory mounted and interconnecting power wiring; recording or portable instruments, gauges or thermometers; non-moving parts or non-maintainable parts of the system, including, but not limited to, storage tanks; pressure vessels, shells, coils, tubes, housings, castings, casings, drain pans, panels, duct work; piping; hydraulic, hydronic, pneumatic, gas, or refrigerant; insulation; pipe covering; refractory material; fuses, unit cabinets; electrical wiring; ductwork or conduit; electrical distribution system; hydronic structural supports and similar items; the appearance of decorative casing or cabinets; damage sustained by other equipment or systems; and/or any failure, misadjustment or design deficiencies in other equipment or systems; (c) Damage, repairs or replacement of parts made necessary as a result of electrical power failure, low voltage, burned out main or branch fuses, low water pressure, vandalism, misuse or abuse, wear and tear, end of life failure, water damage, improper operation, unauthorized alteration of equipment, accident, acts or omissions of Customer or others, damage due to freezing weather, calamity, malicious act, or any Event of Force Majeure; (d) Any damage or malfunction resulting from vibration, electrolytic action, freezing, contamination, corrosion, erosion, or caused by scale or sludge on internal tubes except where water treatment protection services are provided by Company as part of this Agreement; (e) Furnishing any items of equipment, material, or labor/labour, or performing special tests recommended or required by insurance companies or federal, state, or local governments; (f) Failure or inadequacy of any structure or foundation supporting or surrounding the equipment to be worked on or any portion thereof; (g) Building access or alterations that might be necessary to repair or replace Customer's existing equipment; (h) The normal function of starting and stopping equipment or the opening and closing of valves, dampers or regulators normally installed to protect equipment against damage; (i) Valves that are not factory mounted: balance, stop, control, and other valves external to the device unless specifically



included in the Agreement; (j) Any responsibility for design or redesign of the system or the Covered Equipment, obsolescence, safety tests, or removal or reinstallation of valve bodies and dampers; (k) Any services, claims, or damages arising out of Customer's failure to comply with its obligations under this Agreement; (l) Failure of Customer to follow manufacturer recommendations concerning teardown and internal inspection, overhaul and refurbishing of equipment; (m) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving pre-existing building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi; (n) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included within the Services, in which case replacement shall in no event exceed the stated percentage of rated system charge per year expressly stated in the Services; (o) crane or rigging costs; (p) Any Services, claims, or damages arising out of refrigerant not supplied by Company. Customer shall be responsible for: (i) The cost of any additional replacement refrigerant; (ii) Operation of any equipment; and (iii) Any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

10. Limited Warranty. Company warrants that: (a) the material manufactured by Company and provided to Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement; and (b) the labor/labour portion of the Maintenance Services and Additional Work has been properly performed for a period of 90 days from date of completion (the "Limited Warranty"). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any labor/labour improperly performed by Company. No liability whatsoever shall attach to Company until the Maintenance Services and Additional Work have been paid for in full. Exclusions from this Warranty include claims, losses, damages and expenses in any way connected with, related to or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Company; and modifications made by others to equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of equipment manufactured by Company may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by such component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company ("Third-Party Products(s)") are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN. THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF. NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.**

11. Indemnity. To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

12. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), OR CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY OVER THE 12 MONTH PERIOD PRECEDING THE DATE OF OCCURRENCE FOR THE SERVICES AND ADDITIONAL WORK FOR THE LOCATION WHERE THE LOSS OCCURRED. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINANTS OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

13. CONTAMINANTS LIABILITY. The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH) DAMAGE TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANTS LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANTS LIABILITIES.**

14. Asbestos and Hazardous Materials. The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos polychlorinated biphenyl ("PCB"), or other hazardous materials (collectively, "Hazardous Materials"). Customer warrants and represents that there are no Hazardous Materials on the premises that will in any way affect Company's performance, except as set forth in a writing signed by Company disclosing the existence and location of any Hazardous Materials in all areas within which Company will be performing. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and notify Customer. Customer will be responsible for correcting the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to



resume performance only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the premises site for the presence of Hazardous Materials.

15. Insurance. Company agrees to maintain the following insurance during the term of this Agreement with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive rights of subrogation.

16. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company is unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days' notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic; insurrections; riots; labor/labour disputes; labor/labour or material shortages from the usual sources of supply; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

17. Maintenance Services Other Than Solely Scheduled Service. If Company's Maintenance Services hereunder are not limited solely to Scheduled Service, the following provisions shall also apply: (a) Required restoration shall be performed by Customer at its cost prior to Company being obligated to perform hereunder; (b) any changes, adjustments, service or repairs made to the Equipment by any party other than Company, unless approved by Company in writing, may, at Company's option, terminate Company's obligation to render further service to the Equipment so affected; in such case no refund of any portion of the Service Fees shall be made; and (c) Customer shall (i) promptly notify Company of any unusual performance of Equipment; (ii) permit only Company personnel to repair or adjust Equipment and/or controls during the Term or a Renewal Term; and (iii) utilize qualified personnel to properly operate the Equipment in accordance with the applicable operating manuals and recommended procedures.

18. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which Company performs the Services. Any dispute arising under or relating to this Agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by United States Federal judicial bodies and boards of contract appeals of the United States Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other Terms of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

19. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

20. U.S. Government Services. The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(a)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

21. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver or its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.130-7 (0821)

Supersedes 1-26.130-7 (0720)



APPENDIX

SERVICE BEST PRACTICES

Trane is completely dedicated to making buildings better. The ongoing pursuit of better buildings, using our long-term domain expertise to push new technologies into everyday use, keeps us at the forefront of the industry.

In addition to the services details in the agreement above, we take practical steps every day to ensure our approach is safe and efficient.

SAFETY

Since 2003, U.S. Bureau of Labor Statistics records have consistently shown the Total Recordable Incident Rate (TRIR) and Days Away From Work (DAFW) for Trane have been significantly lower than those for HVAC repair and maintenance contractors and specialty trade contractors (construction). The company's safety culture in America is unparalleled in the building service industry, with proven results in the continuous reduction of injury rates. Trane incident rates (OSHA) are consistently 50 to 70 percent below the industry average.

A wide range of safety training and resources are available to Trane technicians, including:

- Safety training—20 hours per year
- Electrical safety—NFPA 70E compliant, electrical PPE
- Fall protection
- Ergonomics
- Smith System Safe Driving Program
- USDOT compliance
- Refrigerant management training

ENVIRONMENTAL PRACTICES

Trane policies and procedures are compliant with all federal and state regulations. Refrigerant (and substitutes) handling, storage and leak repair processes are compliant with Environmental Protection Agency regulation 40 CFR Part 82. Service technicians are Universal-certified and use only certified recovery equipment

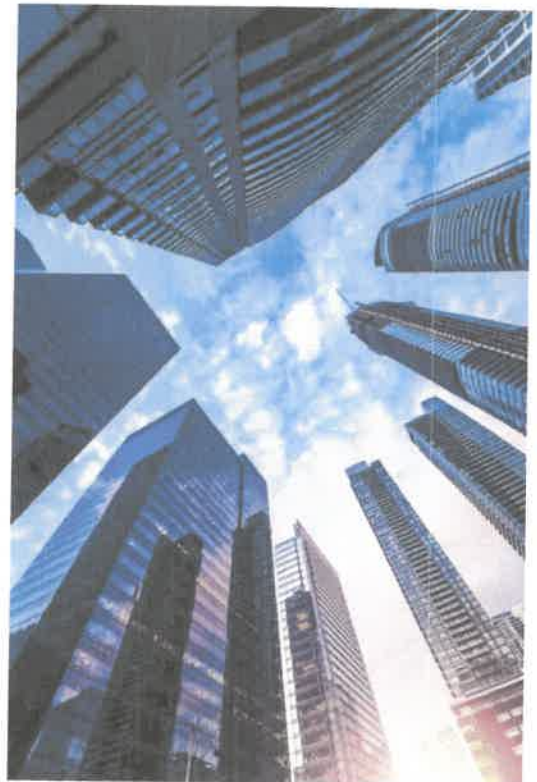
Refrigerant Management Software (RMS) captures, manages and reports all refrigerant activity at your site. Annually, Trane will send you a report documenting all refrigerant activity that we performed for each piece of equipment during the past 12 months

Trane adheres to all environmental regulations when removing used oil from refrigeration units. We have a national contract with a qualified supplier to recycle or dispose of used oil appropriately.

CONSISTENCY

Nationwide, Trane technicians follow documented, formal processes that ensure uniform service delivery. As an OEM, Trane has developed exclusive service procedures which provide the most reliable outcomes, and extended equipment longevity, at the most cost-effective price.

- Exclusive service work flow processes provide detailed steps and information encompassing parts, materials, tools and sequence of execution
- Additional steps addressing safety, quality control, work validation and environmental compliance
- Technicians must consistently reference documented processes to ensure no critical steps are skipped or omitted
- Applicable service processes meet or exceed ASHRAE 180-2008 Standard Practice for Inspection and Maintenance of Commercial Building HVAC Systems





CUSTOMER SERVICE FLOWS

The following Customer Service Flows provide additional service description detail for Covered Equipment. Note: There may be differences per the agreement in the work being performed between sites and the equipment on those sites. This section clarifies differences in the work being performed between sites and the equipment on those sites:

Service 1: Annual Tracker Inspection

Description

- Tracker Annual Inspection

Service 2: CGAM Annual Inspection

Description

- Customer Notification
- Initial Site Inspection
- Visual Condenser Coil Check
- Lock Out Tag Out (Standard)
- Electrical Inspection
- Meg Compressor Motor(s)
- Remove Panels Generic
- Compressor Oil Level Check- Air-Cooled Scroll
- Leak Test (High Pressure)
- Strainer Maintenance - BPHE Units
- Inspect Piping - CGAM
- Coil Cleaning Water (Applied)
- TechView/KestrelView Connection
- Review Diagnostics
- Check Fans for Rubbing
- Check EXV Sight Glass
- Reinstall Panels Generic
- Run Service Report From TechView
- Techview/Kestrel View Disconnection
- Clean and Repaint

Service 3: CGAM Quarterly Inspection

Description

- Customer Notification of Unit Maintenance
- Initial Site Inspection
- Visual Condenser Coil Check
- Shut Down Unit
- Compressor Oil Level Check- Air-Cooled Scroll
- Return Unit to Normal Operation
- TechView/KestrelView Connection
- Check Fans for Rubbing
- Review Diagnostics
- Check EXV Sight Glass
- Run Service Report From TechView
- Techview/Kestrel View Disconnection



Service 4: M Series Annual

Description

- Customer Notification
- Initial Site Safety Inspection
- AHU Visual Equipment Inspection
- Lock Out Tag Out (Standard)
- Electrical Inspection (AHU)
- Supply Fan and Motor Inspection (Air Handler)
- Meg Supply Fan With VFD
- Condensate Drip Pan Treatment
- Condensate Inspection
- Evaporator Coil Cleaning
- Air Handler Filter Inspection
- Check Damper
- Start Up Seasonal Heating-Electric
- Return Unit to Normal Operation

Service 5: M Series Quarterly

Description

- AHU Visual Equipment Inspection
- Lock Out Tag Out (Standard)
- Remove Access Panels or Open Access Doors
- Supply Fan Belt Inspection
- Condensate Inspection
- Coil Inspection (Climate Changer)
- Air Handler Filter Inspection (CSAA)
- Reinstall Access Panels or Close Access Doors
- Remove Lock Out Tag Out
- Return Unit to Normal Operation

Service 6: System Analysis and Review

Description

- Operator Workstation Inspection
- System Controller Inspection
- Verify System Software Programming
- System Back-Up
- Customer Review - 30 Minutes
- Software Service Pack Update (Per Workstation and/or BCU)

Service 7: Condensing Unit Annual Inspection (Light Commercial Less than 20 Tons)

Description

- Customer Notification
- Unitary Visual Equipment Inspection
- Lock Out Tag Out Condenser
- Condenser Coil Check (Generic)
- Coil Cleaning Water (Applied)
- Condenser Physical (One) Fan Check (Generic Condensing Unit)
- Electrical Inspection (Light Commercial Condensing Unit)
- Log Unit (NTP Cooling)



Service 8: Condensing Unit Quarterly Inspection (Light Commercial Less than 20 Tons)

Description

- Customer Notification
- Unitary Visual Equipment Inspection
- Lock Out Tag Out Condenser
- Condenser Coil Check (Generic)
- Condenser Physical (One) Fan Check (Generic Condensing Unit)
- Condenser Physical (One) Fan Check (Generic Condensing Unit)

Service 9: Odyssey Cooling Pre-Season Annual Start Up

Description

- Unitary Visual Equipment Inspection
- Supply Fan Inspection Including LOTO
- Bearing Lubrication
- Evaporator Coil Cleaning
- Filter Inspection And Change
- Condensate Drip Pan Treatment
- Electrical Inspection
- Start Up Seasonal Cooling

Service 10: Odyssey Cooling Pre-Season Annual Start Up

Description

- Unitary Visual Equipment Inspection
- Bearing Lubrication
- Condenser Coil Cleaning (Light Commercial)
- Meg Compressor Motor
- Electrical Inspection
- Condenser Fan Check (Odyssey)

Service 11: Odyssey Quarterly Inspection

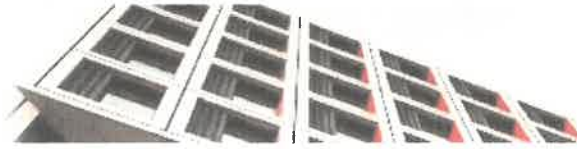
Description

- Unitary Visual Equipment Inspection
- Filter Inspection And Change
- Log Unit (Unitary)

Service 12: Odyssey Quarterly Inspection

Description

- Unitary Visual Equipment Inspection
- Supply Fan Inspection Including LOTO
- Condenser Coil Check (Generic)
- Condenser Physical (One) Fan Check (Generic Condensing Unit)
- Condenser Coil Check (Generic)



Service 13: Split System Computer Room Unit Annual Maintenance

Description

- Customer Notification for Computer Room Units
- Unitary Visual Equipment Inspection
- Return Air Filter Inspection (Computer Room)
- Supply Fan and Motor Inspection (Direct Drive)
- Condensate Drip Pan Inspection and Treatment
- Condenser Coil Cleaning wo/Solution NTP Computer Room
- Evaporator Generic Coil Cleaning-w/Solution (Computer Room NTP)
- Electrical Inspection (NTP Computer Room)
- Log Unit (Computer Room)

Service 14: Split System Computer Room Unit Quarterly Maintenance

Description

- Customer Notification for Computer Room Units
- Unitary Visual Equipment Inspection
- Return Air Filter Inspection (Computer Room)
- Log Unit (Computer Room)

Service 15: Voyager Cooling Pre-Season Annual Start Up

Description

- Unitary Visual Equipment Inspection
- Verify Line Voltage
- Lock Out Tag Out (Standard)
- Supply Fan Inspection-IPAK/VOY
- Remove Access Panels or Open Access Doors
- Electrical Inspection
- Filter Inspection And Change
- Reinstall Access Panels or Close Access Doors
- Evaporator Coil Cleaning
- Condensate Drip Pan Treatment
- Remove Lock Out Tag Out
- Manual Log With Electronic Device
- Return Unit to Normal Operation

Service 16: Voyager Quarterly Inspection

Description

- Unitary Visual Equipment Inspection
- Verify Line Voltage
- Lock Out Tag Out (Standard)
- Remove Access Panels or Open Access Doors
- Filter Inspection And Change
- Reinstall Access Panels or Close Access Doors
- Remove Lock Out Tag Out
- Manual Log With Electronic Device
- Return Unit to Normal Operation



Service 17: Split System Air Handler Cooling Annual Maintenance (Air Handler Only)

Description

- Customer Notification
- Unitary Visual Equipment Inspection
- Filter Inspection and Change (Generic)
- Supply Fan and Motor Inspection (Belt Driven)
- Supply Fan and Motor Inspection (Direct Drive)
- Replace Belt(s) on Supply Fan (Per Fan)
- Generic Meg (One) Fan Motor
- Condensate Drip Pan Inspection and Treatment
- Chilled Water Coil Cleaning-w/Solution
- Electrical Inspection (Air Handler NTP)
- Log Unit (NTP Air Handler)

Service 18: Split System Air Handler Cooling Annual Maintenance (Includes Condenser)

Description

- Customer Notification
- Unitary Visual Equipment Inspection
- Electrical Inspection (Air Handler NTP)
- Log Unit (NTP Air Handler)
- Lock Out Tag Out Condenser
- Condenser Coil Check (Generic)
- Coil Cleaning Water (Applied)
- Condenser Physical (One) Fan Check (Generic Condensing Unit)
- Electrical Inspection (Light Commercial Condensing Unit)
- Log Unit (NTP Cooling)

Service 19: Split System Air Handler Quarterly Maintenance (Air Handler Only)

Description

- Customer Notification
- Unitary Visual Equipment Inspection
- Filter Inspection and Change (Generic)
- Log Unit (NTP Air Handler)

Service 20: Split System Air Handler Quarterly Maintenance (Includes Condenser)

Description

- Customer Notification
- Unitary Visual Equipment Inspection
- Condenser Coil Check (Generic)
- Condenser Physical (One) Fan Check (Generic Condensing Unit)



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

Work Order #:

Purchase Order#:

1/3/2023

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to Trane U.S., Inc. with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

Agreement to piggyback contract for HVAC services.

FORM OF COMPLETED DELIVERABLES:

Labor and Materials

BASIS OF PAYMENT: Services shall be made on the basis of Invoice method in accordance with the Scope of Services, the total not to exceed \$61,515.00 without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within TBD calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Agreement to piggyback contract for HVAC services.	\$61,515.00
2)	
3)	
4)	
5)	
	\$61,515.00
Contract Dollars:	\$61,515.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$61,515.00

Accepted By: Ashley L. Willis
(Signature)

Title/Position: Account Manager

City Engineer: Ashley L. Willis
City Engineer (Signature)

Approved By: [Signature]
Director, PW&E (Signature)

Requested By: Robert Masiku
(Signature)

Approved By: [Signature]
City Manager (Signature)

Approved By: [Signature]
Mayor (Signature)

City Commission Approval Date: _____
(If Required)

Approved as to Form and Legality: _____
City Attorney (Signature)

ITEM 7.E

Approval of Contract for Citywide Security and Fire System Monitoring Services

Request

The Public Works and Engineering Department's Facilities Management Division requests City Commission approval to renew the security and fire system monitoring services contract to Johnson Controls.

Explanation

The renewal of the Johnson Controls services contract is needed due to the expiration of the previous state contract. Staff has negotiated reductions in costs by consolidating various services into a single contract. In addition, by continuing services with Johnson Controls, under Sourcewell contract # 030421-TIS, the City will ensure seamless integration of all existing and future building automation systems.

Staff has determined the pricing to be fair and reasonable for the scope of services required and the features provided by the system.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
56045603-503434			\$306,439.35	\$120,700.00

Financial Summary:

Facilities Management has monies budgeted for these services in the other contract services account.

Recommendation

Facilities Management staff recommends approval to renew the security and fire system monitoring services contract to Johnson Controls in an amount not to exceed \$120,700.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering
Presenter: Mike Steigerwald

Attachment(s):

1. (S) City of Kissimmee - 2022 Agreement
 2. Exhibit A - Redacted
- City of Kissimmee

3. Exhibit B
4. (S) Task Work Order Form
5. Sourcewell contract # 030421-TIS
6. Exhibit A - Unredacted

**AGREEMENT between CITY OF KISSIMMEE
and
CONTRACTOR.**

THIS AGREEMENT is made this _____ day of _____, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, FL 34741, hereinafter “CITY” and JOHNSON CONTROLS SECURITY SOLUTIONS LLC, a limited liability company, 6830 Shadowridge Drive, Suite 215, Orlando, FL 32812, hereinafter “CONTRACTOR” and each represents as follows:

WITNESSETH

WHEREAS, The City of Kissimmee is in need of upgrading security and fire system monitoring, to secure infrastructure, to deter crime and improve public safety in and around City facilities, hereinafter “PROTECT”; and

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

WHEREAS, Pursuant to 4.3.1.2 of the City’s Purchasing code, the City may procure goods and services from bid or proposals through purchasing agreements with the National Joint Powers Alliance (NJPA), a national cooperative purchasing program; and

WHEREAS, Pursuant to competitive bidding and selection process NJPA, as a Lead Agency, on behalf of its member agencies entered into NJPA Contract #030421-TIS, hereinafter “MASTER AGREEMENT” with **JOHNSON CONTROLS SECURITY SOLUTIONS LLC**, which allows other public agencies in need of similar products and services to make purchases through the existing contract, incorporated herein by this reference, and

WHEREAS, City has determined that it is economically advantageous and in the best interest to enter desires to contract with the Contractor to provide the service as detailed in the service proposal, attached hereto as Exhibit “A”.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and value considerations, the receipt and sufficiency of which is hereby acknowledged, each party hereby promises to the other as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **SERVICES.** Contractor agrees to provide products and services in accordance with Service Proposal attached as Exhibit “A” and incorporated herein.
3. **PREMISES.** Contractor agrees to provide these services at the locations described more particularly in the attached Exhibit “B”, City of Kissimmee Service Contract.

4. **WORKMANSHIP and WARRANTY.** Contractor agrees to furnish all material, labor, equipment and tools necessary as well as all work incidental and pertinent thereto, in accordance with the Service Proposal, and this Agreement. Contractor shall provide these services in a professional workmanship manner in accordance with industry standards. Contractor shall provide a ten (10) year warranty on parts, labor and materials. Contractor shall provide a ten (10) year constant light guarantee.
5. **TERM.** The term of this Agreement shall be from the time of execution of the contract through December 20, 2027, the date of expiration of the initial term of the Master Agreement, unless sooner terminates as permitted herein, or unless extended by agreement of the parties set forth in writing. The work shall commence within ten (10) days from the date Contractor receives a copy or original of the fully executed Agreement, which receipt will be considered Notice to Proceed.
6. **PAYMENT.** The City agrees to pay Contractor the total NOT TO EXCEED the sum of One Hundred Twenty Thousand, Seven Hundred Dollars (\$120,700.00), as set forth in the Service Proposal in Exhibit A & B. Invoices shall provide details of all project expenses permitted in this Agreement. Upon review and approval of the Contractor's invoice and verification that services have been rendered in conformity with this Agreement, the City, through payment issued by the Public Works and Engineering 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 the City's receipt of the invoice. If this Agreement is terminated for convenience for any reason, then the Contractor shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred to the effective date of termination.
7. **INSURANCE.** Contractor shall furnish the City with a performance contract bond and a labor and material bond each in the amount of Zero Dollars (\$00). Contractor is required to submit to the City Certificates of Insurance naming the City of Kissimmee as an additional insured. Said Certificate of Insurance shall also provide that at least thirty (30) days written notice shall be given to the City. During the term of the Agreement and any renewals, Contractor at their sole cost and expenses shall maintain insurance coverage as follows:
 - A. **Workers Compensation:** The 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 for Employers' Liability.
 - B. **Comprehensive General Liability:** The Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
 - C. **Comprehensive Automobile Liability:** The Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.

D. **Umbrella Insurance**: The Contractor will provide an umbrella in excess to the coverage in paragraphs B), and C) of not less than \$1,000,000.00

8. **PURCHASE ORDERS.** The City may issue subsequent modifications to the Purchase Order(s) for additional work that was not known or included in the Service Proposal that is found to be needed during the work on the Project to complete the Project over and above the contracted amount. Contractor must seek approval from the City before performing any additional work. The City must provide the Contractor written documentation of the modification to the Purchase Order within three (3) business days of verbal approval. Contractor is not obligated to perform additional work until written modification has been received from the City, but may commence work based upon a reasonable assumption that written modification will be issued. Incidental additional work performed by the Contractor without City consent will be evaluated and considered for payment based upon the work's merit. If the City determines the incidental additional work was not included in the original scope of the project and required for the Contractor's uninterrupted performance in fulfillment of the contract, then the City will approve the Contractor's request for payment for incidental additional work.
9. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate the Agreement in whole or part by giving the Contractor written notice at least thirty (30) days prior to effective date of termination. Upon receipt of termination from the city, the Contractor shall only provide these services specifically approved or directed by the City. All other rights and duties of the parties under the Agreement shall continue during such notice period, and the City shall continue to be responsible to the Contractor for the payment of any obligation to the extent such responsibility has not been excused by breach or default of the Contractor.

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

10. **TERMINATION FOR CAUSE.** If City wishes to terminate the Contractor for cause due to the failure of Contractor to perform as required under this Agreement and/or in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, then the City must provide the Contractor with written notice of said failure to perform. The City must give ten (10) working days from the Contractor's receipt of the Notice to Cure for the Contractor to cure or take reasonable notion to commence to cure the performance concerns specified. If the Contractor does not take appropriate action within the ten (10) day period, the City may issue a Final Notice to Cure. The Contractor will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the City may provide or employ any

necessary labor and materials in lieu of Contractor to finish part or all of the work under the Agreement or to supplement the work of Contractor, and to deduct the cost thereof from any money, then due or thereafter to become due to the Contractor; and if such cost shall exceed the balance due to Contractor, then the Contractor shall pay the difference to the City.

11. **INDEMNIFICATION.** To the extent permitted by law, Contractor, hereby releases and waives all claims against the City, its officers, employees, agents, independent Contractors for any injury or damage to the person, property, or business of Contractor, its agents, employees, sub-contractors, or other persons, for which injury or damage results any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Nothing in the agreement shall be constructed as a waiver of the 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, to the extent caused by Contractor's negligent performance of the Agreement or any breach or default of Contractor.

12. **BREACH.** Failure of Contractor of the City to perform the covenants, conditions, or provisions of the Agreement shall constitute a material default and breach of the Agreement. In the event of any default, the City has the right to terminate this Agreement in accordance with the provisions of Paragraph 10 above. In the event of any default of the City, except the payments required under the Agreement, Contractor may terminate this Agreement immediately without notice. If the City fails to timely pay the monies required under this Agreement, it has fifteen (15) days after written notice from Contractor to cure said default, unless the City disputes satisfactory performance of services.
13. **NON-ASSIGNMENT.** Contractor shall not, without prior consent of the City, assign this contract 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 unless Contractor obtains the City's prior written consent.
14. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.
15. **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 this Agreement.
16. **WAIVER.** No failure of the City to insist upon strict performance in any one or more terms of this Agreement, nor any failure of the City to exercise any right or remedy under

this Agreement shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance.

17. **NOTICES.** Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

Notice to CITY:

Robert T. Masiku
Facilities Construction & Maintenance Manager
104 N Alaska Ave
Kissimmee, FL 34741

Notice to Contractor:

Johnson Controls Security Solutions LLC
6830 Shadowridge Drive, Suite 215
Orlando, FL 32812

18. **ENTIRETY OF AGREEMENT.** This Agreement, together with corresponding Exhibits and together with Master Agreement (#030421-TIS) referenced 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.
19. **MODIFICATIONS.** Any modifications or additional obligations assumed by either party shall be binding only if written and valued considerations exchanged.

Signature page to follow

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

CONTRACTOR Johnson Controls

By: Robert Hansen

Title: Commercial Account Executive

Date: January 6, 2023

STATE OF FLORIDA)

COUNTY OF Orange)

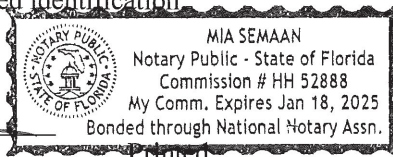
²⁰²³ The foregoing instrument was acknowledged before me this 6th day of January
~~2022~~ by Robert Hansen as Commercial Acct. Mgr Contractor, a Florida corporation,
who is personally known to me or has produced identification

Notary Seal:

Notary: Mia Semaan

Name: Mia Semaan

Expires: 1/18/25



Printed

My Commission

CITY OF KISSIMMEE

By: _____

Date: _____

ATTEST:

Exhibit A - Fire Alarm, Security Alarm, & Access Control Services Citywide

Customer Name	Customer #	Annual	Service	Address
Exempt per F.S. 119.071(3)(a)	117338320	720	Security	Exempt per F.S. 119.071(3)(a)
	117338320	720	Access	
	117338143	2100	Fire	
	117338309	720	Security	
	117338309	720	Access	
	185306705	720	Security	
	117338146	2100	Fire	
	117338146	720	Access	
	117338337	720	Access	
	117338337	1200	Fire	
	117338303	720	Access	
	117338303	1200	Fire	
	117338299	720	Access	
	117338299	1200	Fire	
	117338321	720	Access	
	117338321	1200	Fire	
	117338416	720	Security	
	117338416	2100	Fire	
	117338316	720	Security	
	117338316	1800	Fire	
	117338307	720	Security	
	117338313	720	Security	
	117338229	2100	Access	
	117338229	2100	Fire	
	117338229	720	Security	
	117338314	1800	Fire	
	117338314	720	Security	
	117338311	1800	Fire	
	117338311	720	Security	
	117338302	720	Security	
	117338322	1200	Fire	
	117338322	720	Access	
	117338325	1800	Fire	
	117338328	2100	Fire	
	117338328	720	Access	
	117338338	720	Access	
	117335091	2100	Fire	
	117335091	2100	Security	
	117335091	2100	Access	
	117334402	2100	Fire	
	117338128	2100	Fire	
	117338144	2100	Fire	
	117337917	720	Security	
	117337917	720	Access	
	117338430	2100	Fire	
	117338431	2100	Fire	
	117338714	2100	Fire	
	117338714	720	Security	
	117338714	720	Access	
Total		\$62,700		

Exhibit B - Quarterly Sprinkler Inspections, Annual Backflow Inspections, Annual Fire Extinguisher Inspections, Fire Hoods Cleaning & Inspections, Elevator Monitoring

Citywide Sprinkler Quarterly Inspections - \$28,000.00

Citywide Backflow Annual Inspections - \$23,000.00

Citywide Fire Extinguisher Annual Inspections - \$4,500.00

Fire Hoods Annual Inspections - \$2,000.00

Bryan House Elevator Monitoring - \$500.00

Total - \$58,000.00



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

Work Order #: 1

Purchase Order#:

DATE: 12/16/22

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to Johnson Controls Security Solutions LLC with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

Annual Security and Fire monitoring services.

FORM OF COMPLETED DELIVERABLES:

Labor, Materials, and Equipment.

BASIS OF PAYMENT: Services shall be made on the basis of invoice method in accordance with the Scope of Services, the total not to exceed \$120,700 annually without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within 365 calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Security monitoring	\$ 62,700.00
2) Fire monitoring	\$ 58,000.00
3)	
4)	
5)	
	\$ 120,700.00

Contract Dollars:	\$120,700.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$120,700.00

Accepted By: Robert Hansen
(Signature)

Title/Position: Commercial Account Executive

City Engineer: Ashley L. Willis
City Engineer (Signature)

Approved By: [Signature]
Director, PW&E (Signature)

Approved as to Form and Legality:

City Attorney (Signature)

Requested By: Robert Masiku Digitally signed by Robert Masiku
Date: 2022.12.16 14:31:31 -05'00'
(Signature)

Approved By: _____
City Manager (Signature)

Approved By: _____
Mayor (Signature)

City Commission Approval Date: _____
(If Required)

**Solicitation Number: RFP #030421****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Tyco Integrated Fire and Security dba Johnson Controls, 2400 Skymark Avenue, Mississauga, Ontario L4W 5K5 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Facility Security Systems, Equipment, and Software with Related Services from which Vendor was awarded a contract.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires April 22, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 14 survive the expiration or cancellation of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Vendor warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship for a period of one year for Equipment and Products and ninety days for Services. Vendor's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable

time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcwell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

B. SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcwell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcwell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcwell Price and Product Change Request Form to the assigned Sourcwell Contract Administrator. This form is available from the assigned Sourcwell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcwell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing

restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Vendor will deliver its standard terms and conditions for monitoring services, and its standard terms and conditions for the scope of all task orders, to be incorporated in transaction documents with the Participating Entity. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcwell and Participating Entity inquiries; and
- Business reviews to Sourcwell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Vendor must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcwell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcwell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcwell, the Vendor will pay an administrative fee to Sourcwell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit payment to Sourcwell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Vendor's name and Sourcwell-assigned contract number in the memo; and must be

mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

D. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

E. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. LIABILITY

Vendor must indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of negligence or willful misconduct in the performance of this Contract by the Vendor or its agents or employees for third-party injury or death to person(s) or property or caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Vendor will not be liable for indirect or consequential damages.

12. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.
 - b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article.

Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.
- b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.
- c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.

5. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less

broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. **CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387).** Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. **DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689).** A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

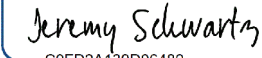
and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. CANCELLATION

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Tyco Integrated Fire and Security dba
Johnson Controls

DocuSigned by:

C0FD2A139D06489...
By: _____
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 4/20/2021 | 1:08 PM CDT

DocuSigned by:

8EC6384F35CF4AB...
By: _____
Jeff Coles
Title: Regional VP Canada
Date: 5/27/2021 | 12:39 PM PDT

Approved:

DocuSigned by:

7E42B8F817A64CC...
By: _____
Chad Coauette
Title: Executive Director/CEO
Date: 5/27/2021 | 2:41 PM CDT

RFP 030421 - Facility Security Systems, Equipment, and Software with Related Services

Vendor Details

Company Name: Tyco Integrated Fire & Security Canada Inc.
Address: 2400 Skymark Avenue
Mississauga, Ontario L4W 5K5
Contact: Grant Foster
Email: grant.foster@jci.com
Phone: 613-219-6782
Fax: 905-212-4601
HST#: 86608 6671RT0001

Submission Details

Created On: Tuesday March 02, 2021 16:25:17
Submitted On: Thursday March 04, 2021 12:48:12
Submitted By: Audie Machado
Email: audie.machado@jci.com
Transaction #: 28b3581c-5c0f-4f07-8361-d4f9f8c30f8a
Submitter's IP Address: 104.129.195.0

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark "NA" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (and applicable d/b/a, if any):	Tyco Integrated Fire and Security dba Johnson Controls	*
2	Proposer Address:	2400 Skymark Avenue, Mississauga, Ontario L4W 5K5	*
3	Proposer website address:	www.JohnsonControls.com	*
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Jeff Coles, Regional VP Canada 2400 Skymark Avenue, Mississauga, Ontario L4W 5K5 jeff.coles@jci.com 905 747 3886	*
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Tom Staves, Cooperative Program Manager 705 Digital Drive, Suite N, LINTHICUM HEIGHTS, MD 21090-2267 Thomas.Staves@JCI.com 443-676-8813	*
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Audie Philip Machado, National Account Manager 2400 Skymark Avenue / Toronto, Ontario L4W5K5 / CANADA audie.machado@jci.com 416-884-0436	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
7	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Johnson Controls has been operating in Canada for over 50 years and over this time we have built up our capacity and capability. We are experienced, financially sound and work hard to ensure our personnel is committed to delivering the right solutions to over 100,000 customers throughout Canada. In February 2014 Tyco combined its SimplexGrinnell and Tyco Integrated Security operations in Canada into one integrated fire and security business, which will go to market as Tyco Integrated Fire & Security. Tyco has been delivering to the security, fire, and life safety industry for years and has built a wealth of expertise, solutions, and people, process, tools, and structures to deliver CCTV products, and related installation and services globally and in Canada. As a combined fire and life safety business in Canada, we strive to provide end-to-end security, fire, and life safety solutions. Along with our 2,000 employees in Canada, we are established in our relationships with a wide variety of manufacturers, and, installation & service third-party vendors and sub-contractors. This combination of internal and external resources helps our organization provide products and end-to-end solutions for intrusion detection, access control, CCTV, and fire and life safety systems and solutions. This positions our team to deliver customer requests for complex integration and standardization, within platforms, across platforms, and beyond security and fire and life safety.	

Core Values, Business Philosophy

Johnson Controls Values:

INTEGRITY FIRST: We promise honesty and transparency. We uphold the highest standards of integrity and honor the commitments we make.

PURPOSE LED: We believe in doing well by doing good and hold ourselves accountable to make the world a better place through the solutions we provide, our engagement in society, the way we do business, and our commitment to protect people and the environment.

CUSTOMER DRIVEN: We win when our customers win. Our long-term strategic relationships provide unique insights and the ability to deliver exceptional customer experiences and solutions.

FUTURE FOCUSED: Our culture of innovation and continuous improvement drives us to solve today's challenges while constantly asking 'what's next.

ONE TEAM: We are one team, dedicated to working collaboratively together to create purposeful solutions that propel the world forward.

Johnson Controls has been operating in Canada for over 50 years and over this time we have built up our capacity and capability. We are experienced, financially sound and work hard to ensure our personnel is committed to delivering the right solutions to over 100,000 customers throughout Canada. Building on a strong heritage, we've combined our Installation and Services businesses in Canada. On March 28, 2015, the entity was created on the amalgamation of Tyco International of Canada Ltd. and Tyco Integrated Security Canada, Inc. This combination of our heritage resources - Tyco Integrated Security (formerly ADT commercial), SimplexGrinnell, and Intercon - positions us as a leading-edge innovation and growth company.

Products Or Services

Johnson Controls offers best-in-class technologies, products, installation, and service capabilities across building management, fire, security, sensors/controls, HVAC, industrial refrigeration, and energy storage solutions. Our offering includes total support for all fire alarm, fire detection, fire protection, integrated security, HVAC, Building Controls, healthcare communications, and sound/communications needs. Our capabilities include design, engineering development, integration, installation, project management, programming, testing, commissioning, training, warranty support, and post-warranty service. Our Technicians are highly trained and use state-of-the-art test equipment to ensure high-quality results and are trained to perform related repairs, in addition to inspections and responding to emergency maintenance requirements. Our life safety services are "Best-Value" for the following reasons:

Specialized inspection teams trained to identify and correct problems before they occur, thus preventing costly nuisance alarms and unnecessary downtime.

Experienced technicians ensure that repairs are done right and in a timely manner.

Standardized reporting and documentation.

Customized service plans to meet any customer's needs.

Our organization provides local support from our North American network of over 150 local offices in the United States and Canada. Each office functions as a "one-stop-shop" providing parts, supplies, and equipment specific to each of the clients it serves. Additionally, Johnson Controls has a Warehouse in Atlanta, Georgia. Staffed with approximately 250 full-time personnel, our team ensures orders are filled promptly. This 240,000 square foot facility stocks extensive inventories of all of the products sold by legacy Tyco International companies, including Simplex fire alarm panels and peripherals, Grinnell and ANSUL fire suppression products, SoftwareHouse, Exacq, Kantech, DSC, and American Dynamics security equipment, and all brands of Nurse Call solutions offered currently or in the past. The warehouse ships an average of over 12,000 orders a month, some 6,000 plus items each month are shipped to Johnson Controls offices.

8	What are your company's expectations in the event of an award?	Tyco Integrated Fire and Security dba Johnson Controls expects to build upon our USA entity's previous contracts successes. We will be utilizing the USA-based Cooperative team to leverage their expertise and knowledge to assist us in quickly going to market. We are looking to re-focus personnel to expand existing local branch relations with RMA to support growth. An annual budget has been submitted to assist in the development of additional collateral and E-marketing campaigns and plans to attend local/ regional trade shows to promote our participation in the program.	*
9	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Tyco Integrated Fire and Security is a wholly-owned indirect subsidiary of Johnson Controls International plc, a publicly owned company listed on the New York Stock Exchange (ticker: JCI). As a wholly-owned subsidiary, Tyco Integrated Fire and Security's financial results are consolidated in the financial statements of Johnson Controls International plc. In Fiscal Year 2020, Johnson Controls saw net revenue of \$22.3 billion with positive cashflow. Johnson Controls enjoys a strong balance sheet with \$10 billion in assets against \$8.2 billion in total liabilities. Total shareholders' equity was \$17.4 billion for FY 2020. We have provided the Johnson Controls 2020 Annual Report, credit and bond ratings, letters of credit, and detailed reference letters	*
10	What is your US market share for the solutions that you are proposing?	Market share information is provided below for the Fire Products and Fire Services markets of Johnson Controls International, the parent company A worldwide leader in market share for Fire Services (7%). No other company has attained greater than 9% of the market share. America's leader in market share for Fire Services (8.3%). No other company has attained greater than 6% of the market share. America's leader in market share for Fire Products (12.3%). No other company has attained greater than 10.5%. Security Integration greater than 5% Share Of Global Market One of the top 6 in the Chiller market with 15% of the market share. One of the top 6 in the Building Automation and Controls market with 5% of the market share.	*
11	What is your Canadian market share for the solutions that you are proposing?	Market share information is provided below for the Fire Products and Fire Services markets of Johnson Controls International, the parent company A worldwide leader in market share for Fire Services (7%). No other company has attained greater than 6% of the market share. America's leader in market share for Fire Services (8.3%). No other company has attained greater than 6% of the market share. America's leader in market share for Fire Products (6.3%). No other company has attained greater than 5.0%. Security Integration greater than 5% Share Of Global Market One of the top 6 in the Chiller market with 15% of the market share. One of the top 6 in the Building Automation and Controls market with 5% of the market share.	*
12	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Johnson Controls has never petitioned for bankruptcy protection.	*

13	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	A - Johnson Controls is a reseller and service provider. Johnson Controls designs and manufactures integrated systems to detect intrusion, control access, and react to movement, fire, smoke, flooding, environmental conditions, industrial processes, and other hazards. In addition, Johnson Controls designs and manufactures fire detection, fire sprinkler, fire suppression, emergency communications, and nurse call systems in both new and existing facilities. Johnson Controls' commitment to providing high-quality life safety solutions runs as deep as our resources. As a highly recognized systems integrator, Johnson Controls has unique ties to brands such as Simplex, York, Metasys, Software House access control systems, American Dynamics, and Exacq CCTV and VMS systems. This equipment is manufactured by our sister company, Tyco Security Products. Consequently, the Johnson Controls team has factory-direct access to TSP's products, pricing, services, and support.
14	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Johnson Controls is qualified to do business in all 50 US states with over 10,000 employees. Regarding contractor & business licensing, Johnson Controls Fire Protection currently operates from more than 120 offices across North America and holds over 2,300 separate required licenses related to Fire Protection & Security Services. Licenses Johnson Controls is legally qualified to do business in all states in the United States and numerous foreign countries. Johnson Controls holds all necessary licenses and registrations to conduct its business. UL Certification Underwriter Lab (UL) is a safety science company that certifies, validates, tests inspect, audits advises, and trains. The requirement for UL system certification varies by area, even within the same state. The process of every aspect of a fire system, extending beyond the usual codes and standards. For example, when a fire system is installed, UL certification would involve very specific documentation and verification process: documenting each piece of equipment, ensuring that each piece bears a UL sticker and is a listed product; confirming the number and color of wires, and so on. Other UL certifications apply to our district or regional offices and must be renewed yearly. These address areas with a lower incidence of false alarms because systems are being installed and maintained properly. UL certification simply makes systems better for our customers and our company is audited by UL every three years to help ensure a quality program. Johnson Controls also has UL-certified products ranging from smoke detectors for special applications to Central Station protective signaling devices. Certifications Johnson Controls technicians are trained and certified in programs by in-house learning management trainings as well as independent, third parties. Our certifications are used as a benchmark of the people who work in life safety. NFPA Certification NFPA (National Fire Protection Association) certification puts an individual into an elite group with exceptional and extraordinarily comprehensive knowledge. NFPA's Certified Fire Protection Specialist (CFPS) program is extremely challenging and a limited number of individuals worldwide have been certified. We have NFPA-certified resources on staff, ranging from technicians to managers, who can offer their

		expertise to our employees company-wide. NFPA does not write codes or standards themselves; they facilitate all-volunteer committees of fire safety professionals who represent all aspects of the industry: enforcers such as AHJs; installers, engineers, owners, and maintenance technicians. The NFPA guides the discussions, bringing the volunteers together to review industry activity and work to reach consensus to develop codes. Johnson Controls Fire Protection is proud to have numerous volunteers working to improve fire safety via NICET committees. It keeps us on the cutting edge of industry changes and helps us drive improvements that better the life-safety industry. We think of safety first, always, voting for new codes even if it will require us to change our products to comply. NICET Certification Our top-quality service workforce includes over 1,700 NICET-certified technicians and that number grows every year. NICET (National Institute for Certification of Engineering Technologists) is significant in our industry. Individuals test based on their area(s) of life-safety disciplines, such as fire alarm systems, sprinkler design, sprinkler inspector, inspection and testing of water-based systems, special hazards suppression systems, water-based layout, audio systems (for low-voltage communications such as public address and sound-reinforcement systems), video security systems designer/technician (a security certification). Individuals are certified as they pass different levels of testing, with one to four levels per discipline: beginner, intermediate, advanced, and expert. Each level can involve dozens of tests. Our company's focus on helping our workforce train for, test, and achieve NICET certification improves our ability to safeguard your people and property. Our workforce includes NICET-certified technicians in every state where certification is required, but we also strongly recommend certification for all of our technicians. The bottom line? We have high-caliber people who take their jobs seriously and we support them during their continuous efforts to advance their skills. It's part of our commitment to always bring you the best in fire and life-safety protection.	
15	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Johnson Controls has been in business for well over 100 years and operates from about 120 offices in all North America. To the best of our knowledge and information, neither company, as a corporate entity, nor any of its branch or satellite offices have been suspended or debarred by any federal, state, provincial, or municipal public agency.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
16	Describe any relevant industry awards or recognition that your company has received in the past five years	Our organization participates in a wide range of activities and has been recognized in several unique areas. The following information highlights some key examples. SUSTAINABILITY AND CORPORATE SOCIAL RESPONSIBILITY 2019 World's Most Ethical Company 12 selections since 2007 (March 2020, selected for the 13th time) Ethisphere Magazine 100 Best Corporate Citizens, 2019 Transparency and social responsibility, since 2006 Corporate Responsibility Magazine 2019 Best Corporate Citizens Community involvement, environmental impact, and fair employee treatment. Forbes Magazine Change the World, 2018 Companies that are doing well by doing good

Fortune Magazine

AAA Rating

Environmental, social, and governance

MSCI Socially Responsible Indices

Carbon Clean 200

Biggest public companies ranked by green energy revenues

Corporate Knights and As You Sow

Energy Star Most Efficient 2020

Most efficient products

Energy Star

Environmental Leader Project of the Year

For partnership with The University of Hawai'i (UH) Maui College

Environmental Leader and Energy Manager Today

Top Project Judges' Choice Award

for its impressive strides in sustainability and renewable energy

Environmental Leader and Energy Manager Today

Environment + Energy Leader 100

Terrill Loughton, VP, and GM of Energy Optimization and Connected Equipment

Environmental Leader and Energy Manager Today

INNOVATION

Johnson Controls Top 100 Global Innovators, 5-time winner

Most innovative corporations and institutions in the world, 2016, 2017, 2019, 2019, 2020

Clarivate Analytics

Overall IoT Company of the Year, 2020

Top companies, technologies, and products in the global Internet of Things (IoT) market

IoT Breakthrough

Most Intelligent Building – Corporate Headquarters (Bee'ah's new headquarters in the UAE)

optimize energy efficiency, make the best use of available space and help the building's occupants be more productive

Digie Award

QUALITY / PRODUCTS

Our organization participates in a wide range of activities and has been recognized in several unique areas. The following information highlights some key examples.

Humanitarian Award, 2019

Fire Commissioner's Humanitarian Award

Fire Department of the City of New York Foundation

Sustainability Product of the Year

The YORK® Mission Critical Direct Evaporative Cooling Air Handling Unit in the 2019 Sustainability Awards. The awards honor those who have made sustainability an integral part of their business practice.

The Business Intelligence Group

Edison Award

Environmentally Friendly Solutions sub-category of the Energy and Sustainability award category

The Edison Awards annually honor excellence in human-centered design and innovation

Five honors in the 2019 Brandon Hall Group Human Capital Management Excellence Awards

Innovative learning solutions and sales training programs that help improve the human capital management space, achieve results and provide meaningful careers

Brandon Hall Group

YORK® YHAU CGN Absorption Chiller – Heater

use of a natural refrigerant (water) that offers zero ozone depletion and global warming potential

New Products for Engineers

2018 IW Best Plants Winner, Norman OK plant

Operational excellence

Industry Week

four 2019 World Class Briefing Awards

for its excellence in management, planning, customer experience, and measurement

Association of Briefing Program Managers

Most Intelligent Building – Corporate Headquarters (Bee'ah's new headquarters in the UAE)

Optimize energy efficiency, make the best use of available space and help the building's occupants be more productive

Digie Award

WORKFORCE DIVERSITY

Grady Crosby, vice president of public affairs and chief diversity officer honored with the 2019 Business Champion award

Commitment to creating a diverse and inclusive workforce

African American Chamber of Commerce

Top 50 Employers for Women Engineers, 2019

Readers of Woman Engineer were asked to name the employers for whom they would most like to work or that they believe would provide a positive working environment for women

Women Engineer

50 Best Companies for Diversity

Dec 2018

Black Enterprise Magazine

Top Employer – China, 2019

For exceptional employee conditions, nurturing and developing talent throughout all levels of the organization and striving to optimize its employment practices and to

		develop its employees Top Employers Institute, China 2019 Best of the Best for U.S. Veterans Top Veteran-Friendly Companies U.S. Veteran's Magazine 2019 Sustainability Awards and Recognition does not include most recognition bestowed to specific locations and individual employees by organizations around the world for our employees' work to build a sustainable world and does not include sustainability indices to which Johnson Controls was named. This list is representative but not exhaustive of global sustainability honors and awards.	
17	What percentage of your sales are to the governmental sector in the past three years	Approximately 20% yearly.	*
18	What percentage of your sales are to the education sector in the past three years	Approximately 16% yearly.	*
19	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Aramark - \$2.1M Kinetic Cooperative (Canada) - New Award	*
20	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	PWGSC – CCTV SO – approximately \$300K/YR PWGSC – IDACS SO – approximately \$400/YR	*

Table 4: References/Testimonials

Line Item 21. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Lethbridge	Dean Romeril	Dean.romeril@lethbridge.ca 403-330-3382	*
Saskatchewan Health Authority	Larry Clark	larry.clark@saskatchewanhealthauthority.ca 306-766-8634	*
Alberta Health Services	Ed Colbourne	Ed.Colbourne@albertahealthservices.ca 780-849-5101	*

Table 5: Top Five Government or Education Customers

Line Item 22. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Toronto Transportation	Government	ON - Ontario	Access Control	Varies by product and scope	\$365K	*
Town Of Vermillion	Government	AB - Alberta	Video & Access Controls	Varies by product and scope \$5-\$20K	\$110K	*
City of Toronto Schools	Education	ON - Ontario	Access Control	Varies by product and scope	\$250K	*
UBC	Education	BC - British Columbia	Access, Fire, Video	Varies by product and scope	\$1.3M	*
City of Vancouver	Government	BC - British Columbia	Fire, Video, Controls, ESPC	Varies by product and scope	\$6.8M	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
23	Sales force.	Locations Of Your Network Of Sales and service providers Johnson Controls owns and operates over 120 offices throughout North America. Each of these offices features a unique capability as a "one-stop" provider in their respective geographic areas. Each facility is staffed with a range of specialized employees who have many years of collective experience in the industry. We have provided a listing of office locations. A services organization staffed by more than 8,900 technicians, installers, and other professionals. Through this organization, Johnson Controls provides 24/7 emergency service and brings customers unrivaled knowledge and expertise in designing, engineering, installing, testing, inspecting, maintaining, servicing, and supporting security, fire detection, fire suppression, and other life safety systems. Our experienced employees design, develop, manufacture, distribute and service our life safety, communication, healthcare, and/or security solutions. Our team works with the appropriate individuals to ensure that our solutions meet all applicable codes and also to maximize the value to our customers. Therefore, we can work as a team to provide value-added services throughout the entire project, as well as during critical support phases post-warranty stages. Our local offices throughout North America are also able to provide a wide array of value-added services listed on the following pages. Our test and inspection, preventative maintenance, and 24/7 emergency services cover numerous life and property protection systems installed in a building - including equipment provided by other manufacturers. Our services include: • Phone Response: The local office can offer support over the telephone. Support personnel often determine if an on-site response is needed. • On-site Response: Our qualified technical representatives can be dispatched to the site if necessary, to begin the troubleshooting and diagnostic process. Service vehicles are equipped with the necessary tools. • Dedicated Technicians SimplexGrinnell can provide dedicated full-time service technicians at the client's facility. Many SimplexGrinnell customers elect these services for large facilities and campuses. Project Management Capabilities The local Offices have experienced engineering and project management staff. These personnel provide engineering and project management to large, complex, multi-building projects. Our Project Managers have a broad range of experience with similar projects. Their responsibilities with a project include the following: • Managing system programming • Preparation of Operation and Maintenance manuals • Managing training resources and scheduling • Developing test protocols • System testing documentation • Maintenance of record drawings • Coordination and scheduling of all subcontracted labor • Scheduling resources • Status determination • Issue identification and resolution

		Communication with the other personnel associated with the project. Johnson Controls employs over 2,000 full-time sales professionals; 750 of these individuals are focused on selling contracting work and larger projects in our managed account portfolio. The balance of our sales force is oriented to selling service contracts. Each of our 120 offices has a mix of contracting and service-oriented salespeople. The size of the market depends on the sales staff size and alignment to the market.	
24	Dealer network or other distribution methods.	Our team has factory-direct access to a leading fire alarm, fire suppression, sprinkler, HVAC, and security products via the Johnson Controls family of products. These include: Metasys York Tyco Simplex Fire Alarm Systems Ansul Fire Suppression Systems Hygood Fire Suppression Systems Neuruppin Fire Extinguishers Pyro-Chem Fire Suppression Systems SKUM Foam Firefighting Products Grinnell Sprinkler Components American Dynamics CCTV Systems Exacq IP Video Surveillance Solutions DSC Security Products Illustra Cameras Proximex Physical Information Management Systems Software House Access Control Systems Kantech Access Control Solutions Scott Life Safety Products CEM Security Management Solutions Bentel Security and Fire Control Systems Visonic Wireless Alarm Systems EZ Care Nurse Call Products Sensormatic Executone Nurse Call Systems Zettler Nurse Call Systems We also have national agreements with today's leading life safety manufacturers to facilitate the integration of their products into our customers' life safety systems. These include, but are not limited to: Kidde Fire Extinguishers Marioff Aimetis Axis Communications	

BCDVideo
 Cisco
 Milestone
 Pelco
 American Signal Corporation
 Arecont Vision
 Assa Abloy DSS
 AtHoc (Desktop Alerts, System Integrations)
 Automatic Control Systems
 Code Blue
 Commend
 Cooper Notification - WAVES
 Dell
 DVTel
 Dynalock
 Fargo
 Firetide
 FLIR (Thermal Imaging)
 HES (Strikes)
 Hewlett Packard via Burgess Computer Decisions
 HID Corp.
 Inova Solutions
 Interlogix - International Fiber Systems
 Intransa
 IQInvision#
 Keyscan (Canada Only)
 L1 Identity Solutions
 Mate Intelligent Video
 Middle Atlantic Products
 Milestone
 OnSSI
 Pivot 3
 S2 Security Systems
 Salient Systems
 Schneider Electric (Continuum)
 Securitron
 Sielox
 Sony

		Talk-A-Phone Tomsed Ultra MagiCard/ Ultra Electronics UTC Fire and Security - Facility Commander Wnx UTC Sentrol Vicon VideoIQ# Winsted Rauland Tektone Valcom Versus Vocera Emergin Ascom Heritage Lenel	
25	Service force.	Johnson Controls owns and operates over 120 district offices across North America, instead of a dealer network. Our offices are centered around major metropolitan areas. This allows our 2,000 sales professionals to focus 100% of their attention on meeting the fire and life safety equipment and service needs of our clients and potential clients surrounding these areas. Johnson Controls self-performs all service work for the fire and life safety systems contemplated by this RFP. Across North America, our services organization is staffed by more than 9,000 technicians, installers, and other professionals. Through this organization, our team provides 24/7 emergency service and brings customers unrivaled knowledge and expertise in designing, engineering, installing, testing, inspecting, maintaining, servicing, and supporting fire detection, fire suppression, and other life safety systems.	*

26	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	We made this change to centralized services to improve our customer service experience. We have benchmarked ourselves against other companies and we determined that a centralized dispatching approach will help us deliver a better, more consistent service experience. The change to a centralized model will help us to better communicate with customers throughout the duration of the service request. We'll be able to better leverage technology and a standard business process to keep the customer informed. The local office will still be responsible for executing the service work with our local technicians, and in fact, will be better able to concentrate our efforts on ensuring customers receive the high-quality service they expect and deserve. All inspection-related service work will be coordinated and scheduled with the local office. Cooperative Communication Standards PREMIER EMERGENCY CALL System/unit is not operational and backup system/unit is not available. Life safety and property protection are non-existent or property assets are in imminent danger of significant damage. • Technician will be dispatched within 3 hours unless a different time frame is required by applicable law PRIORITY CALL System/unit is operational and maintenance or service work is required to maintain system/unit integrity. • Technician will be on-site within 24 hours THREE DAY SERVICE CALL System/unit is operational; general repair is required. • Technician will be on-site within three (3) business days SCHEDULED CALL System/unit is operational; planned appointment for inspection, maintenance, and/or service work. • Technician will be on-site within fourteen (14) calendar days ALL SERVICE RATES WILL BE BILLED ACCORDING To the Sourcewell Agreement, Local Branch Rates Less Discount The minimum charge for an Emergency and a Priority Call is 3 hours The maximum travel charge is 4 hours Overtime fees prevail before 7:00 AM or after 4:30 PM and double-time fees prevail on weekends and holidays Mileage – Standard rates apply for service calls calculated from branch to job site including truck Fees Contracting All Contracting opportunities (new equipment and installation) will be handled by the individual districts and local sales representatives who ultimately have the relationships with the NJPA clients. All quotes and pricing will be monitored by our compliance group and the National NJPA program manager to ensure 100% compliance.	*
27	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Johnson Controls has sister companies available to support all geographic areas in the United States: Johnson Controls Fire Protection, Johnson Controls Security Solutions, and Johnson Controls Inc.	*
28	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Tyco Integrated Fire and Security will support all geographic areas and market sectors of Canada through the proposed contract. We will be offering and promoting an awarded contract to all NJPA member segments and verticals through the proposed contract.	*
29	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	All geographic areas will be fully serviced.	*

30	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	All Sourcewell participating entity sectors will be fully serviced.	*
31	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Johnson Controls has sister companies available to support all geographic areas in the United States: Johnson Controls Fire Protection, Johnson Controls Security Solutions, and Johnson Controls Inc.	*

Table 7: Marketing Plan

Line Item	Question	Response *
32	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Our proposed Sourcewell marketing plan includes a coordinated effort between Tyco, Johnson Controls USA Cooperative Team, and Sourcewell. We will continue to market the SOURCEWELL program both internally and externally via our corporate websites. Brochures will be dispensed in both hard copy and electronic format. Our team's National Sales Manager, Mr. Tom Staves, will continue oversee the program. Mr. Staves will be responsible for driving growth. He will be assisted by the following personnel who have also been supporting Sourcewell in the past. The following sales personnel will assist with the training, promotion, and direct sales to SOURCEWELL clients: Ms. Mary Beth Alexander - New Hire (March 2021) Hayley Nitschke - Marketing The Sourcewell Logo will be added to tradeshow banners and promoted locally and nationally via numerous tradeshows our personnel attends throughout the year. We will continue to promote Sourcewell via our website. We will also distribute a form to clients. The form will be used to request additional information or schedule a meeting with a sales representative.
33	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	We use a variety of electronic platforms to ensure contract awareness and to continually educate customers on life safety in general. Some current updates that are in the process include; having a strong digital component to our advertising program that includes pay-per-click advertising. Online banner advertising, e-newsletters, links to JohnsonControls.com from key websites. We continue to make significant investments in redesigning our website and implementing marketing automation software that integrates with salesforce.com. • Update our existing customer database files for known Sourcewell members • Continuous refresh/updates to the Internet (as stated, there will be a dedicated page to Sourcewell) • Conduct Emailer campaigns • We have launched a very successful webinar series "Learn from the Leader" that takes on a new industry-related topic once per quarter. Free for all that attend. • All Sourcewell customers will have access to Service Channel. A dedicated secure portal where inspection reports, will be uploaded, service calls can be placed, and can even check on the time until the technician arrives. • Will promote via newsletter and corporate announcement
34	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Johnson Controls, Inc. has had tremendous success with our previous Sourcewell awards. As you see we have many of the same customers still with us under Sourcewell and have greatly expanded the program. We continue to make improvements and build upon past successes and learn from some our experiences. Affiliated companies including Johnson Controls Security Solutions, Johnson Controls Inc, Johnson Controls Canada LP, and Tyco Integrated Fire and Security have the benefit of working from procedures that have been established by Johnson Controls Fire Protection. Our team is driven to provide efficient public service through our national contract purchasing solutions and other related programs. We are only able to do this as we work together; creating a unified purchasing alliance that is valued by both Sourcewell Members and contracted suppliers. We understand our sales staff will be responsible for the majority of the marketing responsibilities for this contract. We are positioned to continue to work together to support a wide range of Sourcewell clients.
35	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	Most of our products are designed, developed, and integrated to meet specific customer needs. We can include select suppression products (fire extinguishers) and other off-the-shelf products using this ordering method.

Table 8: Value-Added Attributes

Line Item	Question	Response *
36	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Our team offers a variety of training programs suited to meet every aspect of the customer's needs/request. Depending upon the type of system sold, customer training is part of the original submittal. For instance, security systems are typically sold with an extensive training entre that commences upon system acceptance. Fire Alarm systems generally have operational training included with the sale of a new panel/system. Our team offers the following types of customer training for all types of systems Security, Fire Alarm, Sprinkler, and Suppression). Onsite – Operational Onsite – Customer Assisted Inspections Off-Site – Maintenance Factory Certified Training Most of the onsite training can be provided at minimum to no cost, though this depends on the requirements of the training syllabus. For instance, some customers require operational training to be videotaped for future reference, etc.; this would be an additional charge. All offsite training would be at an additional charge though some program attendee's only need to pay for their hotel and transportation as actual training is free. There is a variety of programs, which depends on the overall need and how much training the customer wants to receive as this ultimately determines the cost.
37	Describe any technological advances that your proposed products or services offer.	Johnson Controls is the world's largest pure-play life safety systems provider in the industry. As such, Johnson Controls is dedicated to being on the cutting-edge of today's fire and life safety technology. We recently introduced the Open Blue Platform to support our customers. The new services suite, available starting from October 2020, integrates touchless technology, sophisticated ventilation, and sanitization systems as well as a flexible infrastructure into digital offerings. This allows a comprehensive range of HVAC, Fire Protection, and Security services to be monitored and managed remotely throughout normal, emergency, and pandemic circumstances. OpenBlue is a complete suite of connected solutions that serve industries from workplaces to schools, hospitals to campuses, and more. This platform includes tailored, AI-infused service solutions such as remote diagnostics, predictive maintenance, compliance monitoring, advanced risk assessments, and more. A dynamic new space from Johnson Controls, OpenBlue is how buildings come alive. This Highly tailored service for fire protection and security use data-driven insights to support better planning and decision-making enhanced productivity and optimized performance. OpenBlue technology powers service the way you want it, with options including predictive maintenance, remote diagnostics, and advanced monitoring.

38	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	At Johnson Controls, we've been dedicated to protecting the environment since our invention of the electric thermostat in 1885, which provided a fundamental shift in the energy efficiency of buildings. Now, all over the world, our products and services empower customers and communities to consume less energy and conserve resources. Our Objectives Sustainability is an integral part of our vision and values. Our environmental efforts are conducted with the following objectives in mind: • Supporting our company's growth and exceeding our customers' increasing expectations for more sustainable products and services. • Fostering a culture of sustainability that engages and attracts people who want to make a difference. • Improving our operational efficiency, including lowering costs and reducing the environmental footprint of our operations and supply chain. • Expanding engagement with our stakeholders on environmental issues, including leading in global partnerships that increase the scale of our sustainability impact. • Demonstrating our commitment from the top, including the continued integration of sustainability into company goals and decision-making. Our Accomplishments Across our organization, we seek to continuously improve in our environmental work. We're proud and fortunate to have been included in more than 40 prestigious sustainability indexes in recent years. 2020 World's Most Ethical Company. Our 13th year in a row to be so recognized—a record only 7 companies worldwide have ever achieved. 100 Best Corporate Citizens, 2020. We achieved the rank of #3 in our category and #18 overall among the 100 Best Corporate Citizens for 2020, for environmental, social, and governance (ESG) transparency and performance. We were up against 1000 of the biggest companies in the US to achieve this ranking. MSCI AAA Status. This is Morgan Stanley's sustainability index. Only 5% of companies achieve AAA. S&P 500 ESG Index. Even at a time when companies like Walmart, Twitter, and Honeywell were dropped from the S&P index, we maintained our spot. We are included in the Dow Jones Sustainability Index as well. Here are just some of the reasons why we've received this recognition: • From 2002 through 2017, we are proud to have reduced our energy intensity by 47 percent and our greenhouse gas intensity by 41 percent. • Our efforts align with the United Nations Sustainable Development Goals, a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. • We always strive to do more, which is why in 2017 we adopted a new 2025 Sustainability Strategy. This strategy drives sustainability across our entire value chain by focusing on five areas: solutions, people, partnerships, performance, and governance. As part of this new strategy, we are committing to new, ambitious 2025 goals related to greenhouse gas emissions, energy, water, waste, safety, and diversity from a 2017 baseline.
39	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	We are unaware of the Certification of independent products, however, Johnson Controls uses third-party software Process Map for our Environmental, Health, and Safety Information System (EHSIS) to track environment, health, and safety data from facilities worldwide. Data are reviewed routinely by qualified personnel, including the regular use of an internal audit process to check not only data in the system but also site-level checks of original records and other aspects. At times, we engage assistance from third-party environmental, health and safety, and ISO consultants for site-specific audits. This includes using, for some sites, certified registrars to validate and certify our operations to various quality, environmental, six sigma, and safety standards, e.g., ISO 9000, ISO 14001, OHSAS 18001. Additionally, filings with environmental, health and safety, and other regulatory agencies are routinely checked internally and by the applicable regulatory agency.

40	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Johnson Controls is a leader in supplier diversity. Since 1993, we have spent more than \$22 billion with certified women- and minority-owned suppliers. Globally, we have included more than 300 diverse and historically underutilized companies into more than 30 product and service procurement categories to support our customer solutions. Johnson Controls' supplier diversity program is successful because of accountability, training, and supplier diversity processes that extend into our customer and supplier networks. Supplier diversity is approached as a discipline that is not confined to one department, geography, or an elite group of star performers. All of the operational, commercial, and advanced supplier diversity activities are tied together with standardized processes company-wide.	*
41	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	At Johnson Controls, our vision is a world that's "safe, comfortable, and sustainable"—and our broad set of innovative security products and services focuses on what you need to make people, facilities, and assets safe. Johnson Controls F leverages the world-class products and services of our affiliates, such as Ansul, Master Protection/FireMaster, Scott, York, Metasys, and Tyco Security Products. Serving a geographic area that covers all of North America, Johnson Controls is committed to being a single-source provider that delivers unequalled customer service. Johnson Controls features a number of distinguishing competencies: • Highly reliable, technologically advanced fire, life safety, integrated security, communications, and workforce management systems and services. • A network of company-owned offices across North America with high-quality systems and consistent services at the local level. Johnson Controls Benefits Include: An Experienced Partner. Johnson Controls' industry expertise spans key vertical markets, including Healthcare, Higher Education, Utilities, Industrial, Manufacturing, Transportation, and Government. Global Resources. Johnson Controls offers local, in-market expertise with regional, national, and global support networks. These networks share resources to support our client's needs and requirements. Best Practices. Our organization seeks to make strategic investments that result in continuous product innovation backed by patent protection. Strategic Plan. Johnson Controls' business model is designed to minimize project risks, preserve our client's profits, and automate efficiencies. By doing so, we gain real-time intelligence from a single, scalable platform capable of providing integrated solutions. Enhanced Services Capabilities Johnson Controls offers a suite of advanced connected life-safety services and technologies powered by OpenBlue. This suite is combined with our technicians' extensive industry knowledge and training to help ensure improved performance and reliability, code compliance, and operational efficiency of customers' fire and life-safety systems. Continuous monitoring and diagnostics enabled by IoT connectivity with a cloud-based platform Field data acquisition enabled by non-intrusive diagnostic technologies and trending analytics Rapid response and issue resolution through Remote Service Support Predictive Diagnostics to diagnose deficiencies and extend equipment life Connected systems providing automatic notifications to helping prevent system failures 24/7 monitoring and live advisory support Preventative maintenance for enhanced system performance and false alarm reduction Xaap (SaaS) solution that provides a centralized platform for building compliance data	*

Table 9: Warranty/Performance Standards or Guarantees

Describe in detail your manufacturer warranty program or performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty or performance materials (if applicable) in the document upload section of your response in addition to responding to the

questions below.

Line Item	Question	Response *	
42	Do your warranties cover all products, parts, and labor?	Our warranty structure is set forth to protect our clients against faulty products installed by or workmanship completed by our personnel. Our warranties cover all products, parts, and labor associated with the Johnson Controls installed or serviced system.	*
43	Describe any performance or service standards or guarantees that apply to your solutions (policies, metrics, KPIs, response times, up-time guarantees, etc.).	A schedule of values is provided with each proposal that provides details of the service or product being provided, outlines timelines, billing, and responsible parties. There are standard communication and response time protocols that will be outlined at the task-order level	*
44	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	There are no usage limitations in our warranty system for Johnson Controls installed or serviced systems.	*
45	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Technician travel time and mileage to perform warranty repairs are covered under our warranty program.	*
46	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Due to the presence of our company-owned district offices throughout North America, we are not aware of any geographic region where we cannot provide warranty repair services.	*
47	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	As indicated above, our policy states we will warranty a system installed by our technicians for a period of 1 year from the date of the customer's beneficial use. Service parts carry a 90-day warranty from the date of installation by a qualified technician. Different manufacturers may offer their own equipment warranties that cover the replacement cost of specific system components.	*
48	What are your proposed exchange and return programs and policies?	According to the specific terms of each client's agreement, we can exchange a faulty piece of equipment or system component under warranty for its current equivalent. Equipment that cannot be repaired, or that is part of a legacy system no longer supported, will be replaced at the client's request.	*
49	Describe any service contract options for the items included in your proposal.	TYCO / Johnson Controls offers a suite of advanced connected life-safety services and technologies powered by OpenBlue. This suite is combined with our technicians' extensive industry knowledge and training to help ensure improved performance and reliability, code compliance, and operational efficiency of customers' fire and life-safety systems. • Rapid response and issue resolution through Remote Service Support • Predictive Diagnostics to diagnose deficiencies and extend equipment life • Connected systems providing automatic notifications to helping prevent system failures • 24/7 monitoring and live advisory support • Preventative maintenance for enhanced system performance and false alarm reduction • Xaap (SaaS) solution that provides a centralized platform for building compliance data 1-5 year plans are available. We cover parts and labor for normal wear and tear. We also offer preventative maintenance plans where we proactively test systems and provide detailed status reports on findings. These can be performed monthly, quarterly, bi-annually, or annually based upon your needs. Johnson Controls Maintenance Plan will distinguish between hardware and software preventive maintenance. In general, computer-skilled technicians perform software preventive maintenance, and hardware preventive maintenance is performed by our Maintenance Technicians. An important part of our maintenance approach is the incorporation of the individual security system's preventive maintenance requirements as specified by the original equipment manufacturer (OEM).	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
50	What are your payment terms (e.g., net 10, net 30)?	Payment terms are Net 30 for all invoices. For contracting sales, a schedule of values will be outlined regarding payment intervals throughout the installation process including after-warranty PSA.	*
51	Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?	It is the intent of Johnson Controls Security Solutions to utilize Sourcewell Approved Leasing Vendor NCL for potential financing of our Sourcewell opportunities. Our organization offers various financial solutions in an effort to remain focused on the financing needs of its customers. Program offerings include: Direct Purchase Fair Market Value (FMV) Purchase Option 10% Purchase Option	*
52	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell participating entities' purchase orders.	Our team's sales representatives will meet with end-user customers and will develop an estimate. The sales representative forwards the estimate to an internal compliance manager who will put together the quote for the customer in accordance with the Sourcewell pricing awarded values. This individual then sends the proposal back to the sales representative so they can provide it to their customer. Throughout the process, there will be hooks in place to monitor the entire sales cycle, from initial contact to the closing of the individual sales. A lead program will be instituted that will track all Sourcewell opportunities. Our in-place "Salesforce.com" system will be used to track the sales process and will also be able to provide status updates in real-time. Also from an IT perspective, hooks will be in place to monitor overall program compliance and ensure that proper pricing and prevailing wages are being utilized. To process a completed sale, a Purchase Order or customer signature is required. Contract Sales will be entered by our local office sales personnel and the orders will be tracked within our in place "Compass" system utilizing a Sourcewell Customer Account Identifier.	*
53	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Yes, Tyco will accept Purchase and Credit Cards for payment processing at no additional cost.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
54	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	TYCO/Johnson Controls pricing model is a line item pricing methodology, same methodology from previously awarded contract 031517-TIS in the USA. TYCO/Johnson Controls will convert the price file using the Canadian exchange rate and will also include an uplift of 5% across all products and services.	*
55	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	GSA Pricing represents a minimum discount of 20-25% from Canada local branch commercial rates.	*
56	Describe any quantity or volume discounts or rebate programs that you offer.	Volume discounts will be considered on a project-by-project basis. Most JCSS solutions are customized for each facility and do not qualify for volume discounts.	*
57	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	These items will be supplied at an NTE cost + 30%.	*
58	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	The Sourcewell sell prices are what the customers pay	*
59	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	On installation projects, shipping is included. There are times when shipping will be added to "Box" sales but this is rare	*
60	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	There are no additional fees outside of very remote locations that would require a considerable time and effort to reach. In these cases, additional costs would be discussed at the ordering level and billed in accordance with per diem rates.	*
61	Describe any unique distribution and/or delivery methods or options offered in your proposal.	There are not any different policies for these locations or other remote areas. Standard policy prevails	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
62	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
63	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.	TYCO / Johnson Controls uses a compliance manager to build all quotes from sales representative estimates to ensure that each proposal is compliant with the awarded contract pricing terms. Additionally, systemic oversight exists and will not allow the proposal to be generated that doesn't meet the minimum requirements. Additionally, there is a review process that happens before booking that reviews documentation, customer master setup, to ensure accuracy.	*
64	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	TYCO / Johnson Controls proposes a 1% administrative fee. On significant opportunities, we would like to leave open our ability to further negotiate a reduction on a case-by-case basis.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	
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65	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	TYCO/Johnson Controls now provides a wide spectrum of innovative products, expert installation and services, and systems integration to help improve operational and energy outcomes for customers worldwide. SECURITY Help protect and enhance working and living environments today and tomorrow with integrated, customer-specific solutions from the world's leading security company. • 24/7 remote monitoring • Access control • Advanced video surveillance • Intrusion detection FIRE, LIFE-SAFETY & HAZARD PROTECTION Help keep people and assets safe with comprehensive solutions, design, installation, service and monitoring from a world leading fire and life-safety systems provider. • Fire alarm systems • Fire sprinkler systems • Fire suppression systems • Mass notification systems • Special hazard solutions BUILDING SERVICES & PARTS Tap into resources of the industry's largest service network for HVAC, security and life-safety system installation and product support. More than 12,000 technicians working out of nearly 500 local offices can provide 24x7x365 proactive monitoring, remote and on-site service and repair, and replacement parts. • Aftermarket parts • Building remote monitoring • Building system and HVAC repair • Planned and preventive maintenance • Predictive and diagnostic services • Security and life-safety system repair LIGHTING CONTROLS & RETROFIT Save energy, minimize costs and meet organizational goals with a range of services, from business remodels, to new construction lighting design, to municipal street lights. • Lighting retrofits BUILDING AUTOMATION SYSTEMS Connect commercial HVAC, lighting, security and protection systems on one platform. Vital data and insights improve efficiency, productivity, and occupants' comfort and safety. • Metasys® building automation system • Metasys Enterprise Optimization applications RETAIL SOLUTIONS Gain real-time insights into retail facilities, inventories, employees & customers to achieve maximum business performance in a digitally driven shopping world. • Loss Prevention • Inventory Intelligence • Traffic Insights OPERATIONAL INTELLIGENCE & LOSS PREVENTION Helps minimize costs, maximize operational performance and enhance return on investment in security programs with business intelligence solutions. • Information management solutions • Real-time location systems (RTLS) for asset management • Video and traffic analytics BUILDING WIDE SYSTEMS INTEGRATION Construct a smarter building by converging building, business/IT and specialty systems on an intelligent infrastructure. Let us streamline the process to measurably improve initial and lifecycle costs, enhance function, ensure connectivity and create an innovative, optimized, sustainable environment.
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66	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Access Control Electronic Access Control Physical Access Control Managed Access Control Hosted Access Control Intrusion Detection Mobile Security Management Burglar Alarm Systems and Installation Panic Devices and Protection Solutions Perimeter Protection Video Surveillance Video Monitoring Systems Video Surveillance Systems Video Analytics Managed Video Smart Elevated Skin Temperature Scanning Solution Cloud Solutions Cloud Video DataSource Mobile Security Management Life-safety and Communications Emergency Communications Mass Notification Active Shooter and Emergency Preparedness Healthcare Communications	*
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Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
67	Alarm, alert, and signal systems	☒ Yes ☐ No	Our fire alarm control panels are the heart of a robust and scalable fire and life-safety communications system. Intelligent, configurable, and expandable, they can meet a wide range of customer and building needs. Our addressable control panels can pinpoint the source of a fire, alert, trouble, or other system event while offering a modular design and an intuitive interface—features that make them easier to install, more reliable, and easier to manage and maintain.	*
68	Building security automation and integration, lighting control, and occupancy detection solutions	☒ Yes ☐ No	Our building automation systems are the foundations of modern building energy management efficiency. Intelligent, world-class technology systems will connect your commercial HVAC, lighting, security, and protection systems. This enables them to communicate on a single platform to deliver the information you need, allowing you to make smarter, savvier decisions while enhancing your occupants' comfort, safety, and productivity.	*

69	Fire detection, sprinkler and suppression systems	☒ Yes ☐ No	Effective fire suppression is a multifaceted challenge that demands a wealth of products, systems, and knowledge. We have long been a leader in this vital element of helping to protect people and property. In fact, we invented the very first sprinkler more than a century ago and have been delivering expertise, innovations, and service to our customers ever since. Today, we manufacture, configure, and install an unmatched range of fire suppression systems including sprinklers and valves, extinguishers and agents, special hazards systems, related components, and fittings. We serve large, multi-site projects through a network of design centers of excellence. We provide software that helps users design and configure systems to meet their unique requirements. Fire suppression solutions from Johnson Controls can help you meet your most vital mission: safety. We offer fire and life safety products from a wide range of brands to meet specific customer needs globally. Control Panels Sensors and Initiating Devices Notification and Audio Devices Networks and Workstations Emergency Communications We offer fire suppression products from our broad portfolio of brands to meet specific customer needs globally. Fire Sprinklers LFP® Antifreeze Fire Valves and Devices Fire Grooved Couplings Water Mist Fire Protection Solutions Fire Sprinkler System Design and Software Gaseous Systems and Control Panels Residential Fire Sprinkler Systems Fire Extinguishers Restaurant fire suppression system Vehicle Systems Industrial Systems Foam, Concentrates, Hardware, and Equipment Hazardous Spill Control Autonomous Fire Suppression Mechanical Fittings and Supports Cold Storage Fire Sprinkler Systems	*
70	Intrusion and breach prevention and detection solutions	☒ Yes ☐ No	Protecting your home and business is of the highest priority. Identifying potential physical threats at the earliest will contribute to safeguarding your assets, quickly alert the right authorities, and also prevent any untoward incident from even occurring. At Johnson Controls, we offer a wide range of security products, which will help you do just that. From detectors and sensors to signaling systems coupled with cutting-edge innovation—like PowerG technology—we provide holistic solutions to strengthen your security. Our security specialists offer a range of perimeter protection solutions to suit small businesses and large enterprises. Whether you want to better manage vehicle traffic in and out of your premises or allow clear access to authorized personnel, we offer round-the-clock protection.	*

71	Glass and window security, armor, and ballistic applications and solutions	☒ Yes ☐ No	Commercial alarm solutions require an array of specialized products—from sensors and detection panels to integration and remote management tools—as well as the expertise and capabilities to integrate them into reliable, robust protection systems. Infrared, photoelectric, and motion sensors Industry-leading intrusion detection panels Monitored 24/7 with emergency dispatch Flexible integration with existing systems Inspections, maintenance, service, and support Local, state, and federal regulatory compliance Online management for easy arming/disarming and monitoring Easily integrated with video, access control, and other systems Alarm verification to reduce or eliminate false alarms
72	Closed circuit television (CCTV), surveillance, and recording solutions	☒ Yes ☐ No	Cameras have always been an integral part of any monitoring system and are extensively used, now more than ever. Recognizing the potential of video surveillance to enhance security, Johnson Controls brings you integrated solutions to simplify as well as strengthen your video surveillance systems. The array of cutting-edge products provide end-to-end support—from cameras and monitors to software for easy integration; collection, analysis, and storage of data; all of which contribute to building a powerful and effective security system Video Management Systems License Plate Recognition Video Intelligence Analytics at the Edge IP Camera Features in Action Video Management Technologies Mobile Apps Video Management System Hardware Monitors Network Video Recorders Encoders Network and Digital Video Storage Video Surveillance IP Cameras

73	Facility and parking access control solutions	☒ Yes ☐ No	Access control is the first line of defense when it comes to the security of your property. With a host of trusted brands in the industry, Johnson Controls offer an extensive range of products to suit establishments of any size and type. We provide comprehensive solutions for your security needs, from biometric and electronic access control hardware to the integrated software; to ensure that your security system is not only well-equipped but also capable of doing much more. Through our innovative access control products, we ensure businesses are well-equipped to safeguard their assets as well as uphold the safety of their staff and visitors. Access Control Software Access Control Hardware Hosted and Managed Security High Assurance Solutions Perimeter detection Integrated Solutions
74	Artificial Intelligence (AI) and robotic surveillance solutions	☒ Yes ☐ No	More and more, building systems are data-enabled and connected to the web. At Johnson Controls, we are partnering with customers to build smart buildings enabled by artificial intelligence and IoT (Internet of Things). OpenBlue helps enterprises put their building data to work, helping facilities managers discover insights, find efficiencies, and create other sources of value, chief among them sustainability. Johnson Controls is at the forefront of smart facilities with solutions that span your enterprise and offer a wealth of potential benefits. These next-generation smart buildings have unique characteristics that unlock new possibilities for how building occupants—employees and visitors, doctors and patients, or teams and fans—interact with their environment. In partnership with our customers, we are creating a self-conscious, self-healing, and occupant-driven building.
75	Facial recognition and thermal screening solutions	☒ Yes ☐ No	The victor and VideoEdge Facial Biometric Analytic immediately alert operators when known individuals enter an area of interest, allowing for a fast and efficient response. Add up to 1,000 faces to victor's Identity Manager, saving resources and providing a scalable facial recognition infrastructure across dozens to hundreds of NVRs. Images can be dynamically added to the database by uploading headshots or saving video still frames. Stored and indexed faces can be easily searched for across the entire enterprise and the corresponding video is displayed for forensic investigation. Utilize this analytic to spot or search for persons of interest such as VIPs, terminated employees, and known criminals. By integrating victor and VideoEdge Facial Biometric Analytics one can easily manage alarms and associated video for a streamlined surveillance system experience. Our non-invasive, contactless thermal camera is ideal for deployment at controlled entrances to areas and facilities where initial skin temperature scanning is needed for staff and visitors. Johnson Controls smart elevated skin temperature scanning solution comprises of a dual sensor, one Thermal the other Colour, camera, and a temperature calibration device known as a Blackbody.
76	Training, consultative, monitoring, and administrative or technical support services, and supplies	☒ Yes ☐ No	Johnson Controls offers several different on-site training approaches that can be customized to meet each customer's requirements. This training approach offers the following advantages: • It will facilitate a seamless installation • It will have residual benefits for years to come. Our on-site training is designed for the fire alarm system operators who will man the system's head-end equipment. The personnel who will be chosen to maintain the fire alarm system should also attend our on-site training sessions. Many Johnson Controls customers elect to visit the world-class training facility at corporate headquarters in Westminster, Massachusetts where they can take advantage of hands-on training on fire alarm equipment specifically designed for each respective training class. SimplexGrinnell is unique in the industry because we offer custom training courses. It is highly probable that our instructors will be the only personnel in the room with the customer's trainees. We will develop a specific course that will be presented only to each customer's employees. We offer courses for the customer participants who will service, program, and maintain the Johnson Controls fire alarm system. This training will allow each customer's personnel to service and maintain, and to identify, correct, and make adjustments or modifications to our

system. After this training, each customer's personnel should be able to maintain, alter, troubleshoot and manage our equipment.

Online training courses are also offered through the Johnson Controls Learning Network which is Internet-accessible. Customers are provided user accounts to access these courses which can be taken multiple times each if desired.

Monitoring

Our ULC listed monitoring center(s) work with our install team to ensure all zones from your sites have been reported properly. Our Data entry team will make sure your call lists and specific site instructions are added before the installation taking place.

In the event of an alarm emergency, our Central Monitoring Station will notify agencies / chosen individuals. Our technicians continue to call the customer contact list until they successfully reach someone. The personnel located in the Central Monitoring Station can communicate instantly – by phone, cell phone, fax, or pager – with anyone in the United States. Alert situations are brought up immediately on the screen, along with a profile containing all pertinent information such as:

- The nature of the incident.
- The person or persons to be contacted.
- The procedure to follow in case of emergency.
- The location of where the call is originating
- The procedure to follow in case of emergency

Johnson Controls Holds a Patent for its Leading-Edge Telecommunications Technology

- Identification of whether a smoke detector, air duct detector, or heat detection alarm has been activated.

The Center monitors fire systems, security systems, remote CCTV systems, and elevator alarm systems, and its services are exclusively focused on the commercial, industrial and institutional markets. When alarm messages come into the Center, trained operators can respond immediately. The Center's systems provide operators with access to all pertinent information necessary to respond to emergencies, including the location and nature of the incident and a detailed listing of whom to call.

Technical Support

Johnson Controls has established a Corporate Service Resource Center in Westminister, Massachusetts. The SRC receives, schedules and dispatches service repair (break/fix) calls for all product lines for all Johnson Controls District offices throughout North America.

The change to a centralized model enables our organization to better communicate with our customers throughout the lifecycle of the service request. We can also leverage technology as well as standard business processes to keep customers informed to maximize their service experience. This approach is meant to enhance our current service offering and create efficiencies in our service response processes to allow for better utilization of our staff of over 8,000 technicians. The National Service Response Center also builds on other key advancements Johnson Controls is investing in. Examples include GPS technology, customer service skills training, and skills training and certification for technicians.

Our customers still have a high level of contact with each local District office and each office will still be responsible for executing the service work with local technicians. The center allows our organization to concentrate efforts on ensuring customers receive high-quality service from our organization.

Supplies

Each Johnson Controls technical representative is supplied with a Johnson Controls technical service vehicle, stocked with a full set of Johnson Controls supplied tools,

			electrical troubleshooting meters, a repair parts inventory, laptop computer, as well as communications equipment. In the unlikely event that a Johnson Controls service technician does not have the required part in the vehicle, we maintain a supply of genuine original equipment Johnson Controls replacement parts at each district office, or overnight from our factory. Our local District office maintains a supply of Johnson Controls fire alarm system parts. This supply will ensure system repairs will be accomplished in a timely manner. If we do not have the required part in stock at our District office, we can draw from other Johnson Controls district offices. Our office also has unequaled access to spare parts and equipment from Global Products, Building Technologies & Solutions, the manufacturer of the proposed Johnson Controls systems. Global Products and Johnson Controls Service offices are both owned and operated by our parent company, Johnson Controls International. Johnson Controls operates a state-of-the-art warehouse facility in the Atlanta, Georgia area. This warehouse supplies key products to Johnson Controls offices and distributes products worldwide. Staffed with approximately 250 full-time personnel, this team ensures orders are filled promptly.
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Table 15: Industry Specific Questions

Line Item	Question	Response *	
77	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	TYCO/Johnson Controls has established KPI's for evaluating the performance of our Cooperative Program. These internal metrics are comprised of data from both sales and finance. For example, one key metric that we utilize is the number of sales representatives that have an active Sourcewell proposal in the Salesforce pipeline.	*
78	Describe any safeguards included in your proposed solutions that protect participating entities' sensitive information.	Our approach to addressing these modern cybersecurity threats is comprehensive. In the presentation we will explain the elements which comprise our approach; each element of the program plays an important role in minimizing risk. At Johnson Controls we must continuously evolve our cybersecurity practices as cybersecurity is continuously evolving. Johnson Controls' Product Security Program builds on the holistic methodology which has been the principle mindset that guided our cybersecurity practices. Preserving all the elements of the initial program, the enhanced program applies the holistic methodology to the three main lifecycle phases of our products (which we will go over in more detail later on in this presentation). By focusing on the development, deployment, and support lifecycle phases we offer: 1. Securely developed products 2. Secure deployment services 3. and Rapid incident response	*

79	Explain your organization's approach to cyber security as it relates to your proposed solutions.	At Johnson Controls our approach to cyber protection is aimed at providing peace of mind to our customers. Our Higher level of Commitment helps to calm their concerns by replacing fear with pragmatic solutions and cyber-resilient systems that provide a range of capabilities to complement their diverse security needs. Our holistic cyber mindset begins at the initial design concept, continues through development, and supported through deployment, and includes a rapid incident response to meet the comprehensive and evolving cybersecurity environment. We provide and support cyber-resilient systems with a range of capabilities to complement the diverse security needs of our customers. Having engineering teams trained in cybersecurity has given Johnson Control an advantage in developing products that consider cybersecurity within its core design. Our certified cybersecurity experts work to validate designs using the latest recognized industry standards and practices. Our cybersecurity experts have certification including, but limited to, Certified Information Systems Security Professional, Certified Secure Software Lifecycle Professional, Certified Cloud Security Professional, and Certified Ethical Hacker. We believe that expert-driven cybersecurity designs provide the forethought required to reduce cybersecurity risk. The holistic design of the Product Security Program results in many benefits which can be linked to a specific element of the program. A few of these benefits include: The policy-driven team assures that cybersecurity is not an afterthought. The secure development practices result in product designs that are more cyber-resilient Cybersecurity testing discovers and addresses critical vulnerability before release Education on cybersecurity empowers customers to approach cyber risks pragmatically Our rapid incident response assesses new threats and vulnerabilities and advises customers on how to reduce their cybersecurity risk in a timely manner.
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80	Describe how emerging technologies are or will be incorporated in your proposed solutions.	OpenBlue is a complete suite of connected solutions that deliver impactful sustainability, new occupant experiences, and respectful safety and security that combines our 135 years of building expertise with cutting-edge technology. It also features a suite of tailored, AI-powered service solutions such as remote diagnostics, predictive maintenance, compliance monitoring, advanced risk assessments, and more. Different security events demand different responses from SOC teams; some have life-safety consequences. Too often, standard response instructions in paper-based SOP documents are at best time consuming to reference and at worst — often outdated. OpenBlue Active Responder is an all-in-one procedure administration solution that digitizes static standard operating procedures in a cloud portal application for SOC Teams to follow each of the dynamic steps of the SOP as a series of actionable instructions. Unidentified threats may have life-safety consequences or significantly disrupt the enterprise. Without the ability to quickly distinguish key threats from insignificant events, security analysts have no hope of responding effectively to security events and effectively mitigating potential damage. Facing an ever-changing threat landscape, Security Professionals are asked to monitor and report on the organizations' ability to meet the preparedness and response requirements to key threats and risks. OpenBlue Risk Insight helps quantify threat impact using asset risk score, so you can report on asset risk over periods of time as part of your ongoing risk management practices. Modern physical security solutions live in the cloud and they bring all the typical benefits associated with any digital transformation— centralized management, scalable solutions, access to tools that require powerful processing, and reduction in costs. Today, thousands of businesses and organizations trust OpenBlue Cloudvue to simplify surveillance, streamline access control, and provide powerful intelligence that improves security operations and helps with organizational efficiency.
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81	Explain how your organization has adapted to provide effective service during the ongoing COVID-19 pandemic.	The Johnson Controls' corporate vision states, "Our products, services, and workplaces reflect our belief that what is good for the environment and the safety and health of all people is good for Johnson Controls." In support of this vision, our regional management teams are strongly committed to providing a safe work environment for all employees. The philosophy and objectives behind this commitment are: The safety and health of all employees and the environment is a top priority that is critical to the success of the business. The only acceptable level of safety performance prevents employee injury and accidents. Safety is the responsibility of every employee, equal to customer satisfaction, quality, profitability, and efficiency. Every day, our goal is to foster an injury-free workplace. All employees receive extensive safety training starting with new hire orientation and continuing with regularly scheduled safety talks, job hazard analysis, and pre-task planning. Our comprehensive 600-plus-page safety program is detailed, documented, and available in electronic format for all of our employees. We also abide by national, state, and local safety codes, as well as those established by the university. In keeping with our Zero Harm vision, we have instituted new measures to prevent the spreading of COVID-19 virus at workplace and construction-sites and are requiring our subcontractors to adhere to these measures as well. We have implemented guidance for all employees on the preventative actions they can take to minimize the risk of infection (handwashing, respiratory hygiene, and cough etiquette to avoid transmission of a contagious virus, etc.). We have increased the frequency of cleaning and sanitization activities at our facilities and customer sites. We have restricted all non-critical air travel, international and domestic, for our employees. Business Continuity Planning Teams have been activated regionally and are proactively monitoring regional changes regarding COVID-19. Escalation plans have been put in place to protect our customers, employees, and subcontractors as part of our standard business continuity plans and ensure appropriate precautionary measures are being taken. Persons who have potentially been exposed, regardless of where or how, are requested to report so immediately, and we have provided subsequent guidance to all of our leaders, Human Resource teams, and employees on the process. Control measures to prevent further spreading will include, as appropriate: thorough worksite disinfection, preventive quarantining, and notification of all internal and external contacts (including recent customer contacts).
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Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Proposer's Affidavit**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 - a. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 - b. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or

- c. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Jeff Coles, Regional VP Canada , Tyco Integrated Fire and Security dba Johnson Controls

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_8_Facility_Security_RFP_030421 Thu February 25 2021 04:41 PM	☒	4
Addendum_7_Facility_Security_RFP_030421 Wed February 24 2021 01:48 PM	☒	2
Addendum_6_Facility_Security_RFP_030421 Thu February 18 2021 12:56 PM	☒	2
Addendum_5_Facility_Security_RFP_030421 Wed February 10 2021 04:31 PM	☒	1
Addendum_4_Facility_Security_RFP_030421 Thu February 4 2021 03:25 PM	☒	1
Addendum_3_Facility_Security_RFP_030421 Tue February 2 2021 02:17 PM	☒	1
Addendum_2_Facility_Security_RFP_030421 Thu January 28 2021 01:03 PM	☒	1
Addendum_1_Facility_Security_RFP_030421 Tue January 19 2021 12:31 PM	☒	1

ITEM 7.F

Accept Tourist Development Council (TDC) Grants from Experience Kissimmee to assist with 2023 Kowtown Festival and Pridefest Kissimmee events

Request

Request to accept Experience Kissimmee TDC Grants to assist in funding special events. This year, the City requested and was awarded \$13,500 for the Kowtown Festival and \$10,000 for the Pridefest Kissimmee event.

Explanation

Each year the City of Kissimmee submits a request for TDC grants to assist in funding special events. This year, the City submitted a request for \$13,500 for the Kowtown Festival and \$10,000 for Pridefest Kissimmee. Experience Kissimmee has awarded both TDC grants for the requested amounts.

These funds will be utilized to help market and advertise the 2023 events which feature great food, music and entertainment for residents and visitors to enjoy. The TDC grants recognize the economic impact on the City's local economy, as these festivals bring many spectators and participants from outside of the area to attend the events.

The Kowtown Festival is being held on March 18, 2023 at the Kissimmee Lakefront Park. This annual event is a celebration of the City's birthday.

The Pridefest Kissimmee event is being held on June 3, 2023 at the Kissimmee Civic Center. This annual event welcomes and builds awareness of the LGBTQ+ community.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00150663-504901		Increase	\$23,500	
00100366-366001		Increase	\$23,500	

Financial Summary:

As mentioned above, these funds will be used solely to advertise and promote these events. Therefore, we will increase the advertising expense account and the revenue accounts.

Recommendation

Approval to accept two Experience Kissimmee TDC Grants for 2023 Kowtown Festival and Pridefest Kissimmee events and amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

City of Kissimmee

Approve

Department: Parks & Recreation

Presenter: Mike Steigerwald

Attachment(s):

1. TDC Grant Kowtown
2. TDC Grant Pridefest



Grantee Contact Information	Grantee's name:	<u>City of Kissimmee</u> ("Grantee")
	Grantee's contact name:	Matt Libby
	Grantee's email address:	Matt.libby@kissimmee.gov
	Grantee's address is:	101 Church St. Kissimmee, Florida 34741
	Grantee's telephone number:	407-518-2332
	Grantee's event name:	Kowtown

TOURISM ENHANCEMENT GRANTS CONTRACT

THIS CONTRACT is made and entered into between the Osceola Convention and Visitors Bureau, Inc., (d/b/a Experience Kissimmee), hereinafter referred to as "Experience Kissimmee" and City of Kissimmee hereinafter referred to as the "Grantee".

RECITALS

WHEREAS, Grantee has applied for a Tourism Enhancement Grant;

WHEREAS, the Osceola County Tourist Development Council ("TDC") is responsible for reviewing, evaluating and awarding such grants to organizations that will stage events and carry out operations that will serve to promote tourism into Osceola County;

WHEREAS, the TDC did award such a grant to Grantee and which grant is the subject hereof;

WHEREAS, Osceola County, Florida, has contracted with Experience Kissimmee to administer such grants;

WHEREAS, Grantee agrees to comply with certain obligations in exchange for the receipt of such grant;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

Section 1. Recitals.

- 1.1. The recitals set forth above are incorporated herein as a material part hereof.

Section 2. Grantee's Obligations.

- 2.1. Grantee has submitted that certain grant application to the TDC and which application is attached hereto as **Exhibit A** ("Application"). Grantee agrees to abide by the statements and representations in the Application which Grantee hereby warrants and represents are true and correct.
 - 2.1.1. Experience Kissimmee may in its sole and absolute discretion agree to vary such obligations, should same be requested in writing by Grantee.
- 2.2. The TDC has awarded a grant to Grantee, and, should such grant be made with requirements, stipulations or similar conditions, then Grantee agrees to abide by same as a precondition to receipt of such grant. Such requirements, stipulations and conditions, if any exist, are attached hereto as **Exhibit B** ("Award").
- 2.3. Grantee agrees that it shall undertake the activities (the "Event") described in the Application as modified, if at all, by the Award, without material variation. Such obligation includes, without limitation, compliance with the grant application's Special Event Marketing Plan and Projected Budget.
- 2.4. Grantee shall undertake and complete all Grant and Award obligations and the Event shall be completed within the current Experience Kissimmee fiscal year.
- 2.5. Grantee will also comply with all requirements of the Tourism Enhancement Grants Manual as it may be at the time of performance.
- 2.6. Failure timely to comply with the requirements set out herein, at Experience Kissimmee's option, may result in forfeiture of the Grant funds and require prompt repayment to Experience Kissimmee. Likewise, any expenditure of Grant funds not in keeping with the requirements hereof will, at Experience Kissimmee's option, result in forfeiture of any or all funds and require prompt repayment to Experience Kissimmee.

Section 3. Grant Amount.

- 3.1. Experience Kissimmee shall remit to Grantee the amount of \$13,500.00 on the following schedule: Approximately 12/18/2022.
- 3.2. In the event that Osceola County should fail to fund, defund or should there otherwise be a shortfall in funding, then Experience Kissimmee shall have no obligation to fund the awarded grant. Experience Kissimmee shall have no obligation to fund any awarded grant from its funds not-specifically designated for Tourism Enhancement Grant purposes, reserve funds or any other source. Experience Kissimmee, in its sole and absolute discretion shall have the option to, but not the requirement to, reduce but not eliminate previously awarded grant funding in such event. Nothing herein gives rise to a lien, claim or securitization with respect to awarded grant funds.

Section 4. Reports, Survey and Documentation Requirements.

- 4.1. Within forty-five days of Event completion, with time being of the essence, Grantee shall submit to Experience Kissimmee as generally described in the Tourism Enhancement Grants Manual:
 - 4.1.1. Actual Event/Project Budget Report;
 - 4.1.2. Marketing Report; and,
 - 4.1.3. Participant/Attendee Surveys.
 - 4.1.4. Failure timely to submit items 4.1.1-4.1.3, may, at Experience Kissimmee's option, result in forfeiture of the Grant funds and require prompt repayment to Experience Kissimmee.
- 4.2. Any unexpended grant funds shall be promptly remitted to Experience Kissimmee without any requirement of demand on the part of Experience Kissimmee.
- 4.3. With respect to the Actual Event/Project Budget Report:
 - 4.3.1. Such report shall include a signed attestation by an officer of the Grantee with sufficient knowledge of the subject matter, and authority to sign for and bind Grantee, representing that the report is accurate, and not misleading, in all material respects.
 - 4.3.2. With respect to the Marketing Report, in addition to the requirements of the Tourism Enhancement Grants Manual, Grantee shall include marketing activities performed in advance of the event, including sample advertisements, the outcome of the event and including the number of actual attendees

4.3.3. With respect to participant/Attendee Surveys, in addition to the requirements of the Tourism Enhancement Grants Manual, Grantee shall provide Participant/Attendee Survey data from at least ten (10%) percent of event attendees or 400, whichever is less, identifying the cities of origin, the number of individuals in each travel party and local accommodations. A sample of said Attendee Survey is attached hereto as **Exhibit C**. In addition, survey data on vendors and support participants, as applicable, should also be reported, noting the cities of origin, number of individuals in the travel party and the local accommodations. Such participant survey is in addition to the attendee survey data report.

4.3.4. Grantee shall promptly provide any other information, documentation, back-up, data and/or the like that Experience Kissimmee and/or Osceola County shall require.

Section 5. Non-Permissible Costs/Expenditures.

- 5.1. In addition to the impermissible expenditure of grant funds generally described in the Tourism Enhancement Grants Manual, Grantee may not expend grant funds for programs that have already been funded via other sources be they public or private.
- 5.2. Grant funds may not be used to pay wages, salaries, administrative expenses or other overhead.
- 5.3. Grantee shall submit related program expenditure information as Experience Kissimmee may request from time to time.

Section 6. Compliance with Florida Law.

- 6.1. The Grant funds remitted to Grantee hereunder are Tourist Development Tax funds the expenditure of which is restricted by, among other things, Florida law.
- 6.2. Grantee agrees that all Grant funds shall be expended in compliance with both the requirements otherwise set out herein, as well as Florida law including without limitation Section 125.0104, Florida Statutes. Such law requires, in pertinent part:

[I]f tax revenues are expended for an activity, service, venue or event, the activity, service, venue or event shall have as one of its main purposes the attraction of tourists as evidenced by the *promotion* of the activity, service, venue or event to tourists.

- 6.3. Grantee acknowledges the foregoing requirement and represents and warrants that the activity, service, venue or event proposed in its Grant application complies with the requirements in such Section 125.0104, Fla. Stats. and all of its other provisions, as well as all other requirements of Florida law.
- 6.4. Grantee warrants and represents that it is generally familiar with the requirements of TDT fund expenditures contained in Section 125.0105, Fla. Stats.

Section 7. **Audit Requirements.**

- 7.1. Grantee shall maintain books, records and accounts of all activities related to the contract, in compliance with United States Generally Accepted Accounting Principles (GAAP).
- 7.2. Throughout the term of this contract, books, records and accounts related to the performance of this contract shall be open to inspection and copying during regular business hours by an authorized representative of Experience Kissimmee and/or Osceola County.
- 7.3. Grantee shall maintain such books, records and account for a period of no less than five years and same shall be subject to inspection and audit for such period.
- 7.4. Experience Kissimmee, may, at its option publish any and/or all such books, records and accounts related hereto should it deem same to be reasonably prudent or, should a competent authority determine that same are “public records” pursuant to the Florida Public Records Act, Chapter 119, Florida Statutes.
- 7.5. Experience Kissimmee and/or Osceola County may audit the books, records and accounts of Grantee with respect to the Grant and/or expenditure of Grant funds.
- 7.6. As a precondition of the receipt of Grant funds, Experience Kissimmee and/or Osceola County may at their option audit Grantee for the purposes of determining whether, in their sole and absolute discretion, Grantee is then presently able to fulfill its obligations hereunder.

Section 8. **Termination/Notice.**

- 8.1. Experience Kissimmee shall have the right to terminate this contract in whole or in part, at any time, upon ten (10) days written notice to the Grantee. Effective thirty (30) days from the termination notice, the Grantee will be required to make fair and reasonable payment to Experience Kissimmee in the amount of the funds not used as previously authorized and/or approved by Experience Kissimmee. Notice shall be sent to the organization’s chief officer at the address shown on the application.

Section 9. Communications.

9.1. Grantee shall submit all reports and may direct questions to:

Melissa Vallejo
Phone: 407-840-1105
Email: Grants@experiencekissimmee.com
Experience Kissimmee
215 Celebration Place
Suite 200
Kissimmee, Florida 34747

9.2. Experience Kissimmee may serve all notices and communicate with Grantee via the Grantee Contact Information listed on the first page hereof.

9.3. Experience Kissimmee and Grantee may amend their contact information by submitting such changes in writing to the other.

Section 10. Indemnity; Insurance.

10.1. Grantee hereby agrees to defend, indemnify and hold harmless the Osceola Convention and Visitors Bureau d/b/a Experience Kissimmee, Osceola County, Florida, as well as their elected officials, officers, directors, employees and contractors, for any and all suits, claims, judgments and the like arising from or relating to Grantee's activities, including without limitation, the Event.

10.2. Grantee shall cause Experience Kissimmee and Osceola County to be named as additional insureds under a commercial general liability policy obtained by and issued to Grantee, in an amount not less than \$1,000,000 per occurrence. Likewise, such policy shall be primary to any policy issued to Experience Kissimmee and Osceola County, which policies shall be secondary.

Section 11. Miscellaneous Provisions.

11.1. The laws of the State of Florida govern this agreement without application of Florida's conflicts of laws, rules and doctrines. Any suit arising from this agreement shall be filed exclusively in the Ninth Judicial Circuit Court in and for Kissimmee, Florida, or in the United States District Court for the Middle District of Florida, Orlando Division should such court have jurisdiction. The parties stipulate that venue and personal jurisdiction are proper in such courts and waive any argument of forum *non conveniens*.

11.2. THE PARTIES WAIVE AND RELINQUISH ANY RIGHT TO A TRIAL BY JURY.

In the event of litigation or legal process arising from or related to this agreement, Experience Kissimmee and Organization expressly submit and consent to a "bench" trial.

11.3. In the event of litigation arising from or related to this agreement, the prevailing party shall be entitled to recover from the other, attorneys' fees, paralegal fees and costs through all appeals.

11.4. If any portion of this agreement is declared invalid by any law, order, decree or judgment of a court having jurisdiction over the parties and/or the subject matter, this agreement will be construed as if such portion is deleted from this agreement.

11.5. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.

11.6. This agreement may be executed in counterparts, each of which is deemed an original. Delivery of an executed counterpart of a signature page to this agreement by facsimile or electronic scan and email shall be as effective as delivery of the originally executed signature page.

11.7. The failure of Experience Kissimmee to insist upon the strict performance of any term of this agreement, or Experience Kissimmee's failure or refusal to exercise any option, right or remedy contained herein, will not be construed as a waiver or relinquishment for the future of such term, option, right or remedy. Rather, such term, option, right, or remedy will continue and remain in full force and effect. There will be no waiver by Experience Kissimmee unless explicitly set forth in writing and signed by Experience Kissimmee.

Section 12. Authorized Signatories

**OSCEOLA CONVENTION & VISITORS
BUREAU, INC (D/B/A EXPERIENCE
KISSIMMEE)**

GRANTEE

By:

By:

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT “A”

Grantee’s Application
[Attached]

2022-2023 TOURISM ENHANCEMENT GRANTS PROGRAM APPLICATION

(Continued)

Marketing Budget (excluding Grants funding) \$4,500

Marketing Budget (including Grants funding) \$18,000

Number of Estimated Attendees: 4,500 Previous Year's Attendance: 2,500

Estimated # of Room Nights in Kissimmee: 75-100

INSTRUCTIONS: Provide a detailed description of the event, its key elements and how TDT funds will be used to attract visitors. Emphasis should be given to identifying the audience and how TDT funds will be used to promote tourism or attract visitors to Osceola County.

1. Please provide a detailed description of the event:

The Kowtown festival is an annual celebration recognizing the anniversary of the City of Kissimmee's founding. Fondly referred to as the city's birthday, the 2023 festival will honor the 140th milestone on Saturday, March 18th from 12:00PM – 5:00PM at Kissimmee's Lakefront Park. The event will feature a variety of delicious food, live music, activities for children at the KUA Kids' Power Zone, local vendors & crafters and birthday cake!

2. Please define key marketing elements of the event and how you will use TDT Funds to attract visitors (example: media, print, radio, television, and internet):

Replicating successful marketing tactics that the City has implemented for other events, promotional elements would include broadcast, digital, print and social media buys.

- Television broadcast - commercials aired on local and cable networks for two weeks prior to the festival.
- Digital – banners and newsfeed ads via websites, mobile applications and social media.
- Print – advertisements in Orlando Weekly, Osceola Gazette, Orlando Times and Osceola Star.
- Social Media – video and photo posts to the City's social media feeds as well as ad buys via Facebook, Instagram and Twitter.

3. Please explain in detail what audience you will be targeting and how will the event support tourism in Osceola County:

The goal, for the 2023 Kowtown Festival, is to reach an audience within a 25-30 mile radius of Kissimmee, ideally reaching Polk, Lake, Seminole and Orange counties, attracting attendees 20-54 years of age, inclusive of families, English and Spanish speaking households. The Kowtown Festival is awesome opportunity to highlight Kissimmee's rich history and traditions, inspiring civic pride in residents and attracting Central Florida visitors to learn more about Osceola County.

4. If you received a Tourism Enhancement Grant in previous years and are requesting a grant increase for 2022-2023, please explain the need for the increase.

We have are not requesting an increase in funding.

2022-2023 TOURISM ENHANCEMENT GRANTS PROGRAM APPLICATION
(Continued)

List the marketing activity (broadcast, print, internet, or other) and which geographic regions or audiences you are intending to reach. Please list the allocated amount for each activity.

ACTIVITY (Print, Internet, broadcast, banners, etc.)	MARKET AREA/AUDIENCE (Geographic area or specific audience)	PROJECTED AMOUNT (Estimated amount devoted to each activity)
Radio	200 mile radius from Kissimmee	6,000
Spectrum TV/Digital Ads	Osceola/Polk/Orange/Lake Counties	2,500
Orlando Weekly	Outside of Osceola County up to 100 mile radius	3,000
Newspapers	Osceola/Polk/Lake/Orange Counties	4,000
Social Media	200 mile radius from Kissimmee	2,000
DKAC Table Topper	Locals in Downtown Kissimmee	500
		Total Marketing Budget \$ <u>18,000</u>

SPECIAL EVENT/PROJECT BUDGET PROJECTIONS

Event/Project Name: Kowtown
Organization: City of Kissimmee
Contact: Matt Libby **Phone:** (407)518-2332
Previous Year Number of Event Attendees: 2,500 (in 2022) **Previous Year Room Nights:** 100
TDT Grant Funds Received Last Year: \$13,500 **TDT Grant Funds Used Last Year:** \$13,500

	Previous Years (19-20) Actual Revenue & Expenses	Projected Revenue & Expenses for FY 22-23
LIST ALL REVENUE		
TDT Grant Dollars	\$13,500	\$ 13,500
Admissions	\$	\$
Concessions	\$	\$300
Sponsorships	\$	\$
Booth Space	\$1,320	\$1,500
Advertising Revenue	\$	\$
Sale of Promotional Items	\$	\$
In-Kind Revenue	\$	\$
Other: (Government funding, Other Grants, Sponsorships, Etc.)	\$	\$
Total Revenue (Including TDT Grant)	\$14,820	\$15,300
LIST ALL EXPENSES		
Administrative	\$5,500	\$6,500
Advertising/Promotions	\$12,525	\$18,000
Printing		\$250
Promotional Items	\$160	\$500
Concessions	\$1,216	\$1,000
Awards	\$50	
Travel		
Talent	\$13,000	\$13,000
In-Kind Expense		
Other: Insurance		
Rentals	\$3,079	\$3,300
A/V		
Venue		
Promoter		
Total Expenses	\$35,530	\$42,550
NET PROFIT/LOSS	(\$20,710)	(\$27,250)

EXHIBIT "B"

Requirements, Stipulations and Conditions of Award

Requirements, stipulations and conditions of the Award are listed in the Grants Manual

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

EXHIBIT "C"

Sample Attendee/Participant Survey

The following information will assist the Osceola Convention & Visitors Bureau (d/b/a Experience Kissimmee) promotion of special events to tourists. Please take a few minutes and complete this survey. Your name and information will not be used for any solicitations. Thank you for your assistance.



Special Event Attendee Survey

Please Print

Today's Date: _____ Name (optional): _____ ☐ Male ☐ Female

City of Residence: _____ State: _____ Country: _____

Number of Travelers in your party: _____

Will you be staying overnight in the Osceola County area during this trip? ☐ Yes ☐ No

If yes, how many nights will you stay? ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10+

What type of lodging will you stay in? (Check one) ☐ Hotel ☐ Motel ☐ Vacation Rental

☐ Campground ☐ Bed & Breakfast ☐ Family/Friends ☐ Other _____

Event Information

What event are you attending? _____

How did you learn about this event? (Check all that apply) ☐ Family/Friends ☐ Internet ☐ Newspaper
☐ Billboard/Magazine ☐ Television ☐ Radio ☐ Brochure/Flier ☐ Other _____

Do you plan to attend this event next year? _____



Grantee Contact Information	Grantee's name:	<u>City of Kissimmee</u> ("Grantee")
	Grantee's contact name:	Matt Libby
	Grantee's email address:	Matt.libby@kissimmee.gov
	Grantee's address is:	101 Church St. Kissimmee, Florida 34741
	Grantee's telephone number:	407-518-2332
	Grantee's event name:	Pridefest

TOURISM ENHANCEMENT GRANTS CONTRACT

THIS CONTRACT is made and entered into between the Osceola Convention and Visitors Bureau, Inc., (d/b/a Experience Kissimmee), hereinafter referred to as "Experience Kissimmee" and City of Kissimmee hereinafter referred to as the "Grantee".

RECITALS

WHEREAS, Grantee has applied for a Tourism Enhancement Grant;

WHEREAS, the Osceola County Tourist Development Council ("TDC") is responsible for reviewing, evaluating and awarding such grants to organizations that will stage events and carry out operations that will serve to promote tourism into Osceola County;

WHEREAS, the TDC did award such a grant to Grantee and which grant is the subject hereof;

WHEREAS, Osceola County, Florida, has contracted with Experience Kissimmee to administer such grants;

WHEREAS, Grantee agrees to comply with certain obligations in exchange for the receipt of such grant;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

Section 1. Recitals.

1.1. The recitals set forth above are incorporated herein as a material part hereof.

Section 2. Grantee's Obligations.

- 2.1. Grantee has submitted that certain grant application to the TDC and which application is attached hereto as **Exhibit A** ("Application"). Grantee agrees to abide by the statements and representations in the Application which Grantee hereby warrants and represents are true and correct.
 - 2.1.1. Experience Kissimmee may in its sole and absolute discretion agree to vary such obligations, should same be requested in writing by Grantee.
- 2.2. The TDC has awarded a grant to Grantee, and, should such grant be made with requirements, stipulations or similar conditions, then Grantee agrees to abide by same as a precondition to receipt of such grant. Such requirements, stipulations and conditions, if any exist, are attached hereto as **Exhibit B** ("Award").
- 2.3. Grantee agrees that it shall undertake the activities (the "Event") described in the Application as modified, if at all, by the Award, without material variation. Such obligation includes, without limitation, compliance with the grant application's Special Event Marketing Plan and Projected Budget.
- 2.4. Grantee shall undertake and complete all Grant and Award obligations and the Event shall be completed within the current Experience Kissimmee fiscal year.
- 2.5. Grantee will also comply with all requirements of the Tourism Enhancement Grants Manual as it may be at the time of performance.
- 2.6. Failure timely to comply with the requirements set out herein, at Experience Kissimmee's option, may result in forfeiture of the Grant funds and require prompt repayment to Experience Kissimmee. Likewise, any expenditure of Grant funds not in keeping with the requirements hereof will, at Experience Kissimmee's option, result in forfeiture of any or all funds and require prompt repayment to Experience Kissimmee.

Section 3. Grant Amount.

- 3.1. Experience Kissimmee shall remit to Grantee the amount of \$10,000.00 on the following schedule: Approximately 3/3/2023.
- 3.2. In the event that Osceola County should fail to fund, defund or should there otherwise be a shortfall in funding, then Experience Kissimmee shall have no obligation to fund the awarded grant. Experience Kissimmee shall have no obligation to fund any awarded grant from its funds not-specifically designated for Tourism Enhancement Grant purposes, reserve funds or any other source. Experience Kissimmee, in its sole and absolute discretion shall have the option to, but not the requirement to, reduce but not eliminate previously awarded grant funding in such event. Nothing herein gives rise to a lien, claim or securitization with respect to awarded grant funds.

Section 4. Reports, Survey and Documentation Requirements.

- 4.1. Within forty-five days of Event completion, with time being of the essence, Grantee shall submit to Experience Kissimmee as generally described in the Tourism Enhancement Grants Manual:
 - 4.1.1. Actual Event/Project Budget Report;
 - 4.1.2. Marketing Report; and,
 - 4.1.3. Participant/Attendee Surveys.
 - 4.1.4. Failure timely to submit items 4.1.1-4.1.3, may, at Experience Kissimmee's option, result in forfeiture of the Grant funds and require prompt repayment to Experience Kissimmee.
- 4.2. Any unexpended grant funds shall be promptly remitted to Experience Kissimmee without any requirement of demand on the part of Experience Kissimmee.
- 4.3. With respect to the Actual Event/Project Budget Report:
 - 4.3.1. Such report shall include a signed attestation by an officer of the Grantee with sufficient knowledge of the subject matter, and authority to sign for and bind Grantee, representing that the report is accurate, and not misleading, in all material respects.
 - 4.3.2. With respect to the Marketing Report, in addition to the requirements of the Tourism Enhancement Grants Manual, Grantee shall include marketing activities performed in advance of the event, including sample advertisements, the outcome of the event and including the number of actual attendees

4.3.3. With respect to participant/Attendee Surveys, in addition to the requirements of the Tourism Enhancement Grants Manual, Grantee shall provide Participant/Attendee Survey data from at least ten (10%) percent of event attendees or 400, whichever is less, identifying the cities of origin, the number of individuals in each travel party and local accommodations. A sample of said Attendee Survey is attached hereto as **Exhibit C**. In addition, survey data on vendors and support participants, as applicable, should also be reported, noting the cities of origin, number of individuals in the travel party and the local accommodations. Such participant survey is in addition to the attendee survey data report.

4.3.4. Grantee shall promptly provide any other information, documentation, back-up, data and/or the like that Experience Kissimmee and/or Osceola County shall require.

Section 5. Non-Permissible Costs/Expenditures.

- 5.1. In addition to the impermissible expenditure of grant funds generally described in the Tourism Enhancement Grants Manual, Grantee may not expend grant funds for programs that have already been funded via other sources be they public or private.
- 5.2. Grant funds may not be used to pay wages, salaries, administrative expenses or other overhead.
- 5.3. Grantee shall submit related program expenditure information as Experience Kissimmee may request from time to time.

Section 6. Compliance with Florida Law.

- 6.1. The Grant funds remitted to Grantee hereunder are Tourist Development Tax funds the expenditure of which is restricted by, among other things, Florida law.
- 6.2. Grantee agrees that all Grant funds shall be expended in compliance with both the requirements otherwise set out herein, as well as Florida law including without limitation Section 125.0104, Florida Statutes. Such law requires, in pertinent part:

[I]f tax revenues are expended for an activity, service, venue or event, the activity, service, venue or event shall have as one of its main purposes the attraction of tourists as evidenced by the *promotion* of the activity, service, venue or event to tourists.

- 6.3. Grantee acknowledges the foregoing requirement and represents and warrants that the activity, service, venue or event proposed in its Grant application complies with the requirements in such Section 125.0104, Fla. Stats. and all of its other provisions, as well as all other requirements of Florida law.
- 6.4. Grantee warrants and represents that it is generally familiar with the requirements of TDT fund expenditures contained in Section 125.0105, Fla. Stats.

Section 7. **Audit Requirements.**

- 7.1. Grantee shall maintain books, records and accounts of all activities related to the contract, in compliance with United States Generally Accepted Accounting Principles (GAAP).
- 7.2. Throughout the term of this contract, books, records and accounts related to the performance of this contract shall be open to inspection and copying during regular business hours by an authorized representative of Experience Kissimmee and/or Osceola County.
- 7.3. Grantee shall maintain such books, records and account for a period of no less than five years and same shall be subject to inspection and audit for such period.
- 7.4. Experience Kissimmee, may, at its option publish any and/or all such books, records and accounts related hereto should it deem same to be reasonably prudent or, should a competent authority determine that same are “public records” pursuant to the Florida Public Records Act, Chapter 119, Florida Statutes.
- 7.5. Experience Kissimmee and/or Osceola County may audit the books, records and accounts of Grantee with respect to the Grant and/or expenditure of Grant funds.
- 7.6. As a precondition of the receipt of Grant funds, Experience Kissimmee and/or Osceola County may at their option audit Grantee for the purposes of determining whether, in their sole and absolute discretion, Grantee is then presently able to fulfill its obligations hereunder.

Section 8. **Termination/Notice.**

- 8.1. Experience Kissimmee shall have the right to terminate this contract in whole or in part, at any time, upon ten (10) days written notice to the Grantee. Effective thirty (30) days from the termination notice, the Grantee will be required to make fair and reasonable payment to Experience Kissimmee in the amount of the funds not used as previously authorized and/or approved by Experience Kissimmee. Notice shall be sent to the organization’s chief officer at the address shown on the application.

Section 9. Communications.

9.1. Grantee shall submit all reports and may direct questions to:

Melissa Vallejo
Phone: 407-840-1105
Email: Grants@experiencekissimmee.com
Experience Kissimmee
215 Celebration Place
Suite 200
Kissimmee, Florida 34747

9.2. Experience Kissimmee may serve all notices and communicate with Grantee via the Grantee Contact Information listed on the first page hereof.

9.3. Experience Kissimmee and Grantee may amend their contact information by submitting such changes in writing to the other.

Section 10. Indemnity; Insurance.

10.1. Grantee hereby agrees to defend, indemnify and hold harmless the Osceola Convention and Visitors Bureau d/b/a Experience Kissimmee, Osceola County, Florida, as well as their elected officials, officers, directors, employees and contractors, for any and all suits, claims, judgments and the like arising from or relating to Grantee's activities, including without limitation, the Event.

10.2. Grantee shall cause Experience Kissimmee and Osceola County to be named as additional insureds under a commercial general liability policy obtained by and issued to Grantee, in an amount not less than \$1,000,000 per occurrence. Likewise, such policy shall be primary to any policy issued to Experience Kissimmee and Osceola County, which policies shall be secondary.

Section 11. Miscellaneous Provisions.

11.1. The laws of the State of Florida govern this agreement without application of Florida's conflicts of laws, rules and doctrines. Any suit arising from this agreement shall be filed exclusively in the Ninth Judicial Circuit Court in and for Kissimmee, Florida, or in the United States District Court for the Middle District of Florida, Orlando Division should such court have jurisdiction. The parties stipulate that venue and personal jurisdiction are proper in such courts and waive any argument of forum *non conveniens*.

11.2. THE PARTIES WAIVE AND RELINQUISH ANY RIGHT TO A TRIAL BY JURY.

In the event of litigation or legal process arising from or related to this agreement, Experience Kissimmee and Organization expressly submit and consent to a "bench" trial.

11.3. In the event of litigation arising from or related to this agreement, the prevailing party shall be entitled to recover from the other, attorneys' fees, paralegal fees and costs through all appeals.

11.4. If any portion of this agreement is declared invalid by any law, order, decree or judgment of a court having jurisdiction over the parties and/or the subject matter, this agreement will be construed as if such portion is deleted from this agreement.

11.5. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.

11.6. This agreement may be executed in counterparts, each of which is deemed an original. Delivery of an executed counterpart of a signature page to this agreement by facsimile or electronic scan and email shall be as effective as delivery of the originally executed signature page.

11.7. The failure of Experience Kissimmee to insist upon the strict performance of any term of this agreement, or Experience Kissimmee's failure or refusal to exercise any option, right or remedy contained herein, will not be construed as a waiver or relinquishment for the future of such term, option, right or remedy. Rather, such term, option, right, or remedy will continue and remain in full force and effect. There will be no waiver by Experience Kissimmee unless explicitly set forth in writing and signed by Experience Kissimmee.

* * *

Section 12. Authorized Signatories

**OSCEOLA CONVENTION & VISITORS
BUREAU, INC (D/B/A EXPERIENCE
KISSIMMEE)**

GRANTEE

By:

By:

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT “A”

Grantee’s Application
[Attached]

(Use additional sheets as needed)

Date 5/24/22

2022-2023 TOURISM ENHANCEMENT GRANTS PROGRAM APPLICATION

(Continued)

Marketing Budget (excluding Grants funding)	\$4,500		
Marketing Budget (including Grants funding)	\$14,500		
Number of Estimated Attendees:	2,800	Previous Year's Attendance:	2,400
Estimated # of Room Nights in Kissimmee:	100-125		

INSTRUCTIONS: Provide a detailed description of the event, its key elements and how TDT funds will be used to attract visitors. Emphasis should be given to identifying the audience and how TDT funds will be used to promote tourism or attract visitors to Osceola County.

1. Please provide a detailed description of the event:

PrideFest Kissimmee is a celebration grounded in welcoming, fostering awareness of and acknowledging the impactful contributions of our local LGBT community. The 2023 event will be the sixth annual celebration on Saturday, June 3rd from 12:00PM-5:00PM at Kissimmee's Civic Center. The festival will feature live performances, advocacy organizations, vendors and food trucks.

2. Please define key marketing elements of the event and how you will use TDT Funds to attract visitors (example: media, print, radio, television, and internet):

Replicating successful marketing tactics that the City has implemented for other events, promotional elements would include broadcast, digital, print and social media buys.

- Television broadcast - commercials aired on local and cable networks for two weeks prior to the festival.
- Digital – banners and newsfeed ads via websites, mobile applications and social media.
- Print – advertisements in Red Shirt Days Guide, Watermark magazine, Orlando Times and Osceola Star.
- Social Media – video and photo posts to the City's social media feeds as well as ad buys via Facebook, Instagram and Twitter.

3. Please explain in detail what audience you will be targeting and how will the event support tourism in Osceola County:

The annual PrideFest Kissimmee coincides with National LGBT Pride Month. As thousands travel for Red Shirt Pride Days, the goal is to encourage those attendees to extend their visit to include the PrideFest event. Promotion of the event will include advertising in the Red Shirt Pride Days Guide, advertising in LGBT media, listings on local LGBT advocacy and media event calendars. Event marketing will also include Central Florida newspapers, broadcast television, digital marketing and social media. The targeted audience are Central Florida residents within a 25-30 mile radius of Kissimmee and out of state visitors, already in market for Red Shirt Pride Days.

4. If you received a Tourism Enhancement Grant in previous years and are requesting a grant increase for 2022-2023, please explain the need for the increase.

We have are not requesting an increase in funding.

2022-2023 TOURISM ENHANCEMENT GRANTS PROGRAM APPLICATION
(Continued)

List the marketing activity (broadcast, print, internet, or other) and which geographic regions or audiences you are intending to reach. Please list the allocated amount for each activity.

ACTIVITY (Print, Internet, broadcast, banners, etc.)	MARKET AREA/AUDIENCE (Geographic area or specific audience)	PROJECTED AMOUNT (Estimated amount devoted to each activity)
Radio	200 mile radius from Kissimmee	7,000
Spectrum Digital Ads	Osceola/Polk/Orange/Lake Counties	1,000
Social Media – Facebook/Twitter/Instagram	200 mile radius from Kissimmee	2,000
Newspapers/Magazine Print	Osceola/Polk/Lake/Orange Counties	4,000
DKAC Table Topper	Locals in Downtown Kissimmee	500
		Total Marketing Budget \$ <u>14,500</u>

SPECIAL EVENT/PROJECT BUDGET PROJECTIONS

Event/Project Name: Pridefest
Organization: City of Kissimmee
Contact: Matt Libby **Phone:** (407)518-2332
Previous Year Number of
Event Attendees: 2,400 **Previous Year Room Nights:** 100
TDT Grant Funds
Received Last Year: \$10,000 **TDT Grant Funds**
Used Last Year: \$10,000

	Previous Years (19-20) Actual Revenue & Expenses	Projected Revenue & Expenses for FY 22-23
LIST ALL REVENUE		
TDT Grant Dollars	\$10,000	\$10,000
Admissions	\$	\$
Concessions	\$401	\$
Sponsorships	\$3000	\$
Booth Space	\$1050	\$1,500
Advertising Revenue	\$	\$
Sale of Promotional Items	\$	\$
In-Kind Revenue	\$	\$
Other: (Government funding, Other Grants, Sponsorships, Etc.)	\$20,095	\$
Total Revenue (Including TDT Grant)	\$32,546	\$11,500
LIST ALL EXPENSES		
Administrative	\$4854	\$6,500
Advertising/Promotions	\$12,300	\$14,500
Printing	\$499	\$250
Promotional Items	\$420	\$500
Concessions	\$1000	
Awards		
Travel		
Talent	\$10,000	\$10,000
In-Kind Expense		
Other: Insurance		
Rentals	\$1500	\$1,500
A/V		
Venue		
Promoter		
Total Expenses	\$27,500	\$33,250
NET PROFIT/LOSS	(\$3,000)	(\$21,250)

EXHIBIT "B"

Requirements, Stipulations and Conditions of Award

Requirements, stipulations and conditions of the Award are listed in the Grants Manual

[illegible]

EXHIBIT "C"

Sample Attendee/Participant Survey

The following information will assist the Osceola Convention & Visitors Bureau (d/b/a Experience Kissimmee) promotion of special events to tourists. Please take a few minutes and complete this survey. Your name and information will not be used for any solicitations. Thank you for your assistance.



Special Event Attendee Survey

Please Print

Today's Date: _____ Name (optional): _____ ☐ Male ☐ Female

City of Residence: _____ State: _____ Country: _____

Number of Travelers in your party: _____

Will you be staying overnight in the Osceola County area during this trip? ☐ Yes ☐ No

If yes, how many nights will you stay? ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10+

What type of lodging will you stay in? (Check one) ☐ Hotel ☐ Motel ☐ Vacation Rental

☐ Campground ☐ Bed & Breakfast ☐ Family/Friends ☐ Other _____

Event Information

What event are you attending? _____

How did you learn about this event? (Check all that apply) ☐ Family/Friends ☐ Internet ☐ Newspaper

☐ Billboard/Magazine ☐ Television ☐ Radio ☐ Brochure/Flier ☐ Other _____

Do you plan to attend this event next year? _____

ITEM 7.G

Purchase and Installation of Boom Equipment from Everglades Equipment Group for the Stormwater Management Program

Request

Approval to purchase a 30-foot mower boom for stormwater management purposes available through Everglades Equipment Group in the amount of \$51,437.

Explanation

The Streets & Stormwater Division of the Public Works & Engineering Department maintains the city's stormwater management systems and ponds. Due to a structural break and internal rust in the mower boom attached to a 2016 John Deere slope mower (DR104), a new 30-foot replacement boom is required. Everglades Equipment Group, a certified representative for Alamo, offers the boom and labor for a total cost of \$51,437. The quote includes the complete boom package for \$83,941.45, minus the attachment knuckle as the part remains in good condition, for a final quote of \$51,437.

Quotes were requested from two other Central Florida certified Alamo dealers: 1) Menzi USA and 2) Fields Equipment Company. Menzi USA refused to offer a quote and the Fields Equipment Company responded that they no longer service Alamo; therefore, Everglades Equipment Group was the selected vendor. The Fleet Maintenance Division has reviewed the purchase in order to ensure compatibility and conformance with city standards. Procurement has also reviewed the specifications to allow for competitive and comparative pricing.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
40945503-504649	SW2325	Decrease	\$ 372,778.90	\$51,437.00
40945506-506494		Increase		\$51,437.00

Financial Summary:

Adequate funds are available in the Stormwater Utility Fund to cover the cost of the project.

Recommendation

Staff recommends City Commission approval to purchase a 30-foot mower boom for stormwater management purposes available through Everglades Equipment Group in the amount of \$51,437.

REQUESTED CITY COMMISSION ACTION:

Approve

City of Kissimmee

Department: Public Works & Engineering
Presenter: Mike Steigerwald

Attachment(s):

1. Everglades Equipment Group Quote



Ship to:

City of Kissimmee
Matt- 407-518-2506

Invoice to:

City Of Kissimmee
Purchasing Department
101 Church Street
Kissimmee FL 34741

Branch St. Cloud, FL		
Date 09/21/22	Time 17:06:23 (O)	Page 01
Account No. KISSI001	Phone No. 4075182509	Invoice No. W05952
Ship Via 85-8012621610C8		Purchase Order
		Salesperson G17

SERVICE WORK ORDER

STK#/FLEET#	HRS	PIN/EIN	WARRANTY DATE	HRS
C210563 Tractor 6145M		X 1L06145MHGH850868	08/24/18	2000
SEGMENT# 1 5 8090 ETURFDIAG	09/01/22	09/01/22	09/30/22	
Alamo Repair			72.00	72.00
<u>COMPLAINT:</u>				
Alamo Repair Serial # 1608 01				
<u>ADDITIONAL DESCRIPTION:</u>				
Part # 02995013 Alamo 30ft Maverick Boom				
ALSO: Replace hyd. hoses from front of tractor to Mav turret				
DEP	Deposit	1	40908.05	40908.05
FRTIN	Inbound Frt	1	1608.95	1608.95
			PARTS	42517.00
			LABOR	7920.00
10400000			SEGMENT TOTAL==>	50437.00
SEGMENT# 2 5 INTER EMHS23757	09/01/22	09/01/22	09/30/22	
R & R Hyd Hosing at FT - Pump Case Drain			14.63	14.63
Replace hyd. hoses from front of tractor to Mav turret				
			LABOR	1609.30
10400000	46000216		SEGMENT TOTAL==>	1609.30

***** WORK ORDER TOTALS *****

	INTERNAL	CUSTOMER
PARTS		42517.00
LABOR	1609.30	7920.00
SERVICE ACCESSO		1000.00
INTERNAL TOTAL	1609.30	
TOTAL CHARGE		51437.00

- ☐ I request a written estimate for which there is a charge of \$_____.
- ☐ I do not request a written estimate as long as the repair costs do not exceed \$_____.
- *1 hour minimum
- ☐ I do not request a written estimate.

I hereby authorize the above repair work to be done along with the use of necessary materials. You and your employees may operate above machine for purposes of testing, inspection or delivery at my risk. I agree to pay cash on delivery of machine or on terms satisfactory with you. If after 90 days of notification of completion of repairs, the payment for work is not received, the above equipment may be sold to recover the expenses of repair. I also agree that you are not responsible for delays caused by the unavailability of parts or delays in parts shipments by the supplier or transporter. It is understood that this company assumes no responsibility for loss or damage by theft, fire or natural disaster to machine placed with them for storage, sale, repair or while field testing. 90 DAYS PARTS AND LABOR WARRANTY.

Signed: _____

Nagel Altrui

From: Chris . <chris@menziusa.com>
Sent: Thursday, December 1, 2022 9:58 AM
To: Matt Schmidt
Cc: Parts Email; Service Email
Subject: Fwd: Alamo 30ft Maverick Boom Quote

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

Matt,

Menzi USA will not be quoting this job. Hope you can find another company.

Christopher Meadows

Get [Outlook for iOS](#)

From: Parts Email <parts@menziusa.com>
Sent: Thursday, December 1, 2022 9:48 AM
To: Chris . <chris@menziusa.com>
Subject: FW: Alamo 30ft Maverick Boom Quote

Michael Horak



Menzi USA Sales, Inc.
Parts Department
1850 Fairbanks Street
Lakeland, FL 33805
Phone: 863-603-7979
Fax: 863-603-7987

From: Matt Schmidt <Matt.Schmidt@kissimmee.gov>
Sent: Thursday, December 1, 2022 9:46 AM
To: Parts Email <parts@menziusa.com>
Subject: RE: Alamo 30ft Maverick Boom Quote

The tractor is a 2016 JD 6145M 4WD

Matt Schmidt
Streets & Stormwater, Assistant Manager
City of Kissimmee Public Works & Engineering

2213 W. Mabbette St.
Kissimmee, Florida 34741
Office: 407.518.2506
matt.schmidt@kissimmee.gov



From: Parts Email <parts@menziusa.com>
Sent: Thursday, December 1, 2022 9:41 AM
To: Matt Schmidt <Matt.Schmidt@kissimmee.gov>
Subject: RE: Alamo 30ft Maverick Boom Quote

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

Hi Matt,

Can you please provide me with the tractor model and serial number.

I will need this to better serve you,

Thank you,

Michael Horak



Menzi USA Sales, Inc.
Parts Department
1850 Fairbanks Street
Lakeland, FL 33805
Phone: 863-603-7979
Fax: 863-603-7987

From: Matt Schmidt <Matt.Schmidt@kissimmee.gov>
Sent: Thursday, December 1, 2022 9:11 AM
To: Parts Email <parts@menziusa.com>
Subject: Alamo 30ft Maverick Boom Quote

Good morning,

We recently had a situation where our boom broke off of our tractor. I would like a price quote on a Alamo 30ft Maverick boom, part # 02995013. We'll also need to replace the hydraulic hoses from front of tractor to the Maverick turret.

Thanks,

Matt Schmidt

Streets & Stormwater, Assistant Manager
City of Kissimmee Public Works & Engineering

2213 W. Mabbette St.
Kissimmee, Florida 34741
Office: 407.518.2506
matt.schmidt@kissimmee.gov



PUBLIC RECORDS NOTICE: All e-mail sent to and received from the City of Kissimmee, Florida, including e-mail addresses and content, are subject to the provisions of the Florida Public Records Law, Florida Statute Chapter 119, and may be subject to disclosure.

PUBLIC RECORDS NOTICE: All e-mail sent to and received from the City of Kissimmee, Florida, including e-mail addresses and content, are subject to the provisions of the Florida Public Records Law, Florida Statute Chapter 119, and may be subject to disclosure.

Nagel Altrui

From: Jeb Fields <jfields@fieldsequip.com>
Sent: Monday, November 21, 2022 2:12 PM
To: Matt Schmidt
Subject: RE: A new Contact Us - form has been submitted by matt.schmidt@kissimmee.gov

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

I am sorry we are currently not setup as an Industrial Alamo dealer. I check the dealer locator and it Does show us there, they might not updated their site.

Jeb

Jeb Fields
Fields Equipment Company
3203 Havendale Blvd. NW
Winter Haven, FL 33881
(863) 967-0602

-----Original Message-----

From: NoReply@endeavorsuite.com <NoReply@endeavorsuite.com>
Sent: Monday, November 21, 2022 1:04 PM
To: Phil Collier <pcollier@fieldsequip.com>
Cc: Jeb Fields <jfields@fieldsequip.com>; Kate Ziemak <kziemak@fieldsequip.com>
Subject: A new Contact Us - form has been submitted by matt.schmidt@kissimmee.gov

Attn: Winter Haven
3203 Havendale Blvd NW
Winter Haven, FL 33881

A new Contact Us - form was submitted from your website <http://www.fieldsequip.com> on November 21, 2022 at 12:03PM.

: ContactUs
First Name: Matt
Last Name: Schmidt
Email Address: matt.schmidt@kissimmee.gov
Phone Number: 4075182385
Preferred Contact Method: Email
Comments/Inquiries: I would like a price quote on a Alamo 30ft Maverick boom, part # 02995013. We'll also need to replace the hydraulic hoses from front of tractor to the Maverick turret.

Thanks,

Matt

ITEM 7.H

Approval of Lease between Senator Victor M. Torres, Jr. and the City of Kissimmee for Office Space at City Hall

Request

Approval of a two-year lease between the City of Kissimmee and Senator Victor M. Torres, Jr. for office space at City Hall.

Explanation

Senator Victor M. Torres, Jr. was re-elected to the Florida State Senate in 2022. Senator Torres leased space in City Hall during his previous term and has requested to continue to utilize the office space for his next term. The new lease term will expire on November 5, 2024 and will be paid at a monthly amount of \$690.

Recommendation

Staff recommends approval of the lease.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter: Mike Steigerwald

Attachment(s):

1. (S) City of Kissimmee Lease (Partially Executed)

CITY OF KISSIMMEE LEASE

THIS AGREEMENT is made this _____ day of _____, 2022, between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, hereinafter called ("CITY"), and **VICTOR M. TORRES, JR.**, member of the Florida State Senate, (the "Lessee"), and each represents as follows:

RECITALS

WHEREAS, City of Kissimmee is the owner of a certain building located at 101 Church Street, Kissimmee Florida 34741 (hereafter called "Property"), in Osceola County, Florida; and

WHEREAS, City of Kissimmee recognizes the value to the community that the local presence and access to state and federal elected officials provides the residents of the City; and

WHEREAS, as such the City of Kissimmee has historically offered state and federal elected officials the opportunity to lease property within City Hall; and

WHEREAS, Victor M. Torres, Jr., is a member of the Florida State Senate representing District 15, who desires to rent space in the City of Kissimmee City Hall for a district office.

NOW, THEREFORE, in consideration of the covenants and agreements hereafter set forth, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **LEASED PREMISES.** For the consideration provided herein, City does hereby lease and demise to LESSEE, hereinafter the "Leased Premises," located at Kissimmee City Hall, 101 Church Street, Suite 305, consisting of 140 square feet of unfurnished office space. This includes use of general off-street parking on an as available basis, but no reserved parking. The Lessee accepts the Premises in an "as is" condition.
3. **TERM OF LEASE.** This Lease is effective from November 9, 2022, through November 5, 2024 unless sooner terminated in accordance with the terms and provisions hereof. If re-elected in November of 2024, this lease may be renewed. Notwithstanding the foregoing, however, either party hereto shall have the right to terminate this Lease prior to the date upon which it would otherwise expire by giving

the other party at least thirty (30) days written notice of intention to do so.

4. **RENT**. In consideration for the rights granted hereunder, Lessee hereby agrees to pay to City, without demand, on the first day of each calendar month during the term hereof, in advance, without set-off or deductions, the following sum, plus any and all sales or use taxes due thereon:

Six Hundred Ninety Dollars (\$690.00), including water, sewer, and electrical utilities.

The rent includes utilities, general janitorial services, pest control, and maintenance of the common areas. Rent does not include security, phone or internet. In the event that the term of this Lease shall commence or end on any day other than the first and last day, respectively, of a calendar month, the consideration due hereunder for a portion of such month shall be prorated on a per-diem basis, and the first payment shall be due on or before the effective date hereof.

The rent may be adjusted on an annual basis in accordance with the annual average percentage change in the U.S. Department of Labor Consumer Price Index for all Urban Consumers, All Items, (CPI-U) City Average, as may be calculated using CPI data available at that time. City shall provide Licensee a notice of price adjustment thirty (30) days prior to implementation.

5. **SECURITY DEPOSIT**. Lessee has previously paid the City a security deposit of Eight Hundred Fifty Dollars (\$850.00), consisting of \$300.00 security deposit, and last month's rent at prior the lease rate of \$550.00, to be held in a non-interest bearing account as security deposit for the full and faithful performance of this Agreement (herein after "Security Deposit"). Said Security Deposit shall be returned to Lessee, without interest, within ten (10) business days after proper expiration of the terms of this Agreement and delivery of possession of the premises to the City in a clean and like conditions as when received, normal wear and tear excepted. In the event that City finds it necessary to assess any charge against the Security Deposit, the Lessee shall receive written notice of the amount and reason for such charges, said notice to be sent ten (10) days before City collects said charges. Lessee understands that if there is damage beyond reasonable wear and tear, its liability is not limited to the amount of the Security Deposit.

6. **TIME AND PLACE OF PAYMENT.** All payments are to be made at the office of the Finance Director, City of Kissimmee, 101 N. Church Street, Kissimmee, FL 34741 or such other place City may direct Lessee in writing.
7. **INSURANCE REQUIRED.** The amount of comprehensive general liability required to be carried by Lessee is \$100,000.00. The City of Kissimmee is to be named as additional insured.
8. **USE OF LEASED PREMISES.** Lessee will use the office as a district office as a member of the Florida Senate, and for no other purpose whatsoever. City certifies that the office complies with federal and state laws with regard to access to a public office, including but not limited to applicable access provisions of Subtitle A of Title II of the American with Disabilities Act. Lessee shall at all times have the full and free right of ingress and egress. Such right also extends to persons or organizations supplying materials or furnishing services to Lessee, as well as employees, customers, guests and other invitees, which includes vehicles, machinery and equipment reasonably required by such persons or organizations.
 - A. **ENTRY AND INSPECTION.** City shall have the right to enter upon and inspect the Leased Premises at any reasonable time during the term hereof for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The city shall not, during the course of any such inspection, unreasonably interfere with the Lessee's use and enjoyment of the Leased Premises.
 - B. **CONSTRUCTION, ALTERATIONS, REPAIRS.** Lessee shall not erect any structures, make any improvements or modifications or undertake any other construction on the Leased Premises, nor alter, modify or make additions, improvements or repairs to or replacement of any structure existing or built, or install any fixtures (other than trade fixtures removable without permanent injury to the Leased Premises) without prior written approval of the City.
 - C. **SIGNS.** No signs shall be erected or maintained by Lessee except according to the City's requirements for location and use of signs. Before erection, Lessee must obtain written approval from City to erect any signs within City Hall.

D. TRASH AND GARBAGE REMOVAL. City shall provide arrangement for the general sanitary handling and disposal of trash, garbage and other refuse. Lessee shall maintain the Leased Premises including all improvements at all times in a safe, neat and sightly condition and shall not permit the accumulation of any trash or debris on the Leased Premises. Lessee shall collect recycling in the blue receptacles provided, and place the receptacle outdoors at the designated site on Thursday mornings for collection. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.

E. MAINTENANCE. City shall be responsible, at its own cost and expense for all maintenance of structures, including permanent light fixtures and maintain hand fire extinguishers. Lessee shall be responsible for maintenance of their own equipment, including but not limited to telephone, copiers and computers.

9. **DAMAGE OR DESTRUCTION OF PREMISES.** Lessee is not responsible for normal, reasonable wear and tear. If the Leased Premises shall be partially damaged by fire, flood, lightening, windstorm or other force of the elements or by the public enemy or from any cause not caused by the Lessee so as to adversely affect the Lessee's use of its exclusive space therein, even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the City at its own cost and expense.

A. If damage caused shall be so extensive as to render the Lessee's exclusive space untenable, but nevertheless capable of being repaired and made tenantable within a period of sixty (60) days, the City shall repair the damage with due diligence at its own cost and expense. The rent payable shall be proportionately paid up to the time of such damage but shall thenceforth cease until such time as such building and space shall be restored.

B If the Leased Premises are completely destroyed or so damaged that it will and does remain untenable for a period of more than sixty (60) days, either party shall have the right to terminate this Lease upon written notice to the other within sixty (60) days from the date of such damage or destruction.

C. Nothing in this Article shall apply to damages to the Leased premises caused by the acts of the Lessee, and Lessee shall, at its own cost and expense, promptly repair with due diligence all such damages resulting from its act of said character.

10. **TERMINATION OF AGREEMENT.** This Agreement shall terminate without action by either party at the end of the initial term or any renewal term.

A. **TERMINATION BY LESSEE.** Lessee may terminate this Agreement if the City is in default of performance of any covenant or agreement herein required to be performed by City, and the failure of City to remedy such default for a period of sixty (60) days after receipt from Lessee of written notice to remedy the same.

B. **EXERCISING LESSEE'S RIGHTS OF TERMINATION.** Lessee may exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the City.

C. **TERMINATION BY CITY.** City may terminate this Agreement, without written notice unless otherwise specified below, in the event Lessee shall:

1. Be in arrears in the payment of the whole or any part of the rent or other payments required for a period of thirty (30) days after the time such payments become due;
2. Abandon the Leased Premises;
3. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from CITY of said default;
4. Violation of CITY rules and regulations not inconsistent with the provisions of this lease and such default continues for a period of thirty (30) days after receipt of written notice from CITY of said default;
5. Death of the Tenant, or resignation or removal from Office.

D. **WAIVER OF STATUTORY NOTICE TO QUIT.** In the event CITY exercises its option to terminate this Agreement upon the happening of any of the events set forth in Section C of this Article (Termination by CITY), a Notice of Termination shall be sufficient to terminate this agreement. Upon such termination, Lessee agrees that it will forthwith surrender up possession of the Leased Premises to CITY. In this connection, Lessee expressly waives the receipt of any Notice to Quit or Notice of Termination which would otherwise be given by CITY.

11. **SUBLETTING AND ASSIGNMENT.** Lessee may not rent or sublease the Leased Premises without the prior written consent of the City. City

may allow assignment of the lease to the Senate Member who takes office if Lessee dies, resigns or is removed from office. In such event, Lessee shall remain liable to CITY for the remainder of the term of the Agreement to pay to City any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the City, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

12. **GENERAL PROVISIONS**

- A. ATTORNEY'S FEE AND TRIAL WAIVER/VENUE. It is mutually agreed by and between Lessee and CITY that each of the parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. Venue of all actions shall be Osceola County, Florida. In any such action each party shall pay their own attorney's fees, including those incurred in appellate proceedings.
- B. TAXES, LICENSES AND PERMITS. Lessee shall pay all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Lessee located on the Leased Premises. In the event any real estate taxes are assessed against the land or improvements on the Leased Premises during the term of this Agreement, such taxes shall be paid by Lessee. Lessee shall obtain and pay for all licenses, permits, fees, or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.
- C. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- D. NOTICE. Any notice required to be made by this Agreement, given or transmitted to the parties, shall be served by Certified or Registered Mail with return receipt, to tenant at the leased premises, in addition to the following:

CITY: City Manager's Office
101 Church St.
Kissimmee, FL 324741

Lessee: Senator Victor Manuel Torres, Jr.
Florida State Capitol
404 South Monroe Street
Tallahassee, Florida 32399-
1100
Telephone: (850) 487-5015
Email: Torres.Victor@flasenate.gov

or such other addresses as the parties may designate to each other in writing.

- E. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- F. SUCCESSORS AND ASSIGNS. All terms, covenants and agreements contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- G. COMPLIANCE WITH LAW, RULES AND REGULATIONS. Lessee shall, at its sole cost and expense, observe and comply with the statutes, rules and regulations of all governmental authorities applicable to the conduct of Lessee's business as well as all rules, ordinances, and regulations of the CITY not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of the Lessee's breach of any of the above shall be borne by Lessee.
- H. SEVERABILITY. It is agreed by and between the CITY and the Lessee that if any covenant, condition or provision contained in this Lease is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.
- I. MODIFICATIONS. No modifications or amendments to this Agreement shall be binding unless contained in writing, duly signed by the parties.
- J. ENTIRETY OF AGREEMENT. This Agreement will constitute the entire Agreement of the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except as incorporated herein.

- K. 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 Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Signature page to follow

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

CITY OF KISSIMMEE

Approved as to form and legality

City Attorney

By: Mayor-Commissioner

Date: _____

Tenant

Victor M. Torres, Jr.

By: Victor Torres, Jr., State Senator

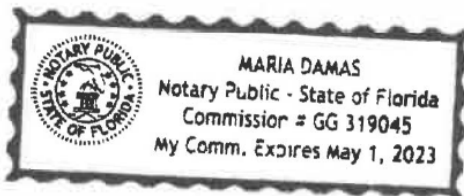
Date:
Dec 19 2022

STATE OF FLORIDA)
COUNTY OF Osceola)

The foregoing instrument was acknowledged before me this 19th day of December, 2022, by Victor Torres, Jr. who is personally known to me or has produced identification.

Notary Seal:

Notary: Maria Damas
Print Name: Maria Damas
My Commission Expires: May 1 2023



ITEM 7.I

Monument Sign Easement for First Loop Logistics Park

Request

Approval of a Monument Sign Easement in favor of First Industrial, L.P.

Explanation

First Industrial, L.P. is the Site Developer of the B-1 parcel of the (fka) Flora Ridge DRI, a project known as First Loop Logistics Park. The Project consists of construction of a maximum of 400,000 gross square feet of building area for industrial purposes, in addition to a network of public infrastructure, including stormwater ponds and a four-lane roadway extension of Flora Boulevard from Thacker Avenue to John Young Parkway. The Developer has dedicated stormwater tracts to the City. During the Project's design and approval process, the City issued a building permit for an entrance monument sign to be located in the corner of one of the stormwater tracts dedicated to the City. In order to erect the monument sign at the approved location, the Developer needs to obtain non-exclusive easement rights on portions of the City's stormwater tract. The Developer will be responsible for constructing and thereafter operating, maintaining, repairing and replacing, at its sole expense, a lighted and landscaped monument sign.

Recommendation

Staff recommends approval of the monument sign easement in favor of First Industrial, L.P.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter: Mike Steigerwald

Attachment(s):

1. (S) Monument Sign Easement for First Loop Logistics Park

Prepared by and return to:

Thomas E. Francis, Esquire
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida 32801-2028

MONUMENT SIGN EASEMENT

This Monument Sign Easement ("Easement") is made this ____ day of _____, 2022, by THE CITY OF KISSIMMEE, a municipal corporation of the State of Florida ("Grantor") to FIRST INDUSTRIAL, L.P., a Delaware limited partnership qualified to do business in the State of Florida, and its successors and assigns ("Grantee").

BACKGROUND

A. Grantee is the owner of Lots 1-4, inclusive, of First Loop Logistics Park, according to the Plat thereof, as recorded in Plat Book 32, Page 169 of the Public Records of Osceola County, Florida (the "Grantee Property"); and

B. Grantor is the owner of Tract A Pond-1 Stormwater Pond of First Loop Logistics Park, according to the Plat thereof, as recorded in Plat Book 32, Page 169 of the Public Records of Osceola County, Florida (the "Grantor Property"), which is located adjacent a portion of the Grantee Property; and

C. Grantor has agreed to grant Grantee a signage easement over and across a portion of the Grantor Property, subject to the terms and conditions hereinafter stated.

AGREEMENT

NOW THEREFORE, in consideration of the premises hereof and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Grant of Easement.** Grantor hereby grants to Grantee a perpetual and non-exclusive easement over, across, upon, under and through that portion of the Grantor Property described on Exhibit "A" attached hereto (the "Easement Area"), for the purpose of constructing and thereafter operating, maintaining, repairing and replacing, at Grantee's expense, a lighted and landscaped monument sign (the "Monument Sign"). Grantor further grants unto Grantee reasonable access to the Easement Area over any portion of the Grantor Property to facilitate the purposes set forth.

Grantee shall use, operate, maintain, repair and replace the Monument Sign in good condition and repair, in compliance with all applicable laws, rules and regulations.

3. **Approval of Monument Sign.** The size, color, graphics, lighting, and other design details of the Monument Sign shall be subject to the reasonable approval of Grantor, which approval shall not be unreasonably withheld, conditioned, or delayed. The initial size, color, graphics and other design details of the Monument Sign shall be as depicted on Exhibit "B" attached hereto (the "Initial Design"), which Initial Design has been reviewed and approved by Grantor.

4. **Indemnification.** Grantee shall protect, defend, hold harmless and indemnify Grantor and Grantor's directors, officers, employees, and agents from and against any and all action, claims, damages and/or loss, including, but not limited to, actions or claims relating to Grantee's employees, contractors, or subcontractors, except for Grantor's negligence, and including, but not limited to, claims for remediation, damages, or fines of governmental entities, which may be assessed now or in the future, together with any costs and attorney's fees occasioned by or growing out of any actual or claimed usage or condition of the Easement Area arising in any manner whatsoever, directly or indirectly, by reason of this Easement or Grantee's utilization hereof.

5. **No Waiver of Sovereign Immunity.** No provision of this Easement shall be construed to be a waiver by Grantor of the sovereign immunity under Florida Statutes, Section 768.28 and the limitations of liability applicable to Grantor by virtue of this immunity.

6. **Duration; Modification.** The easements hereby granted, created and declared shall be perpetual in duration and may not be changed, amended, modified, canceled or terminated other than as expressly provided herein, except by an instrument in writing, executed by the then owner of the Easement Area and the Grantee Property.

7. **Incidental Rights.** The easements hereby created and granted include the creation of all incidental rights reasonably necessary for the use and enjoyment of the Easement Area for its intended purposes, including, specifically, the right of entry for purposes of maintenance, operation, repair and construction within the Easement Area.

8. **Successor and Assigns; Runs with the Land.** With or without specific reference thereto, the conveyance of an interest in any portion of the Easement Area or the Grantee Property shall be subject to the respective burdens and benefits of the easements hereby created and granted to the same extent as if all of the terms of this instrument were set forth in such conveyance in full. The easements, covenants, agreements and conditions contained or expressed herein shall not be personal (except as otherwise expressly provided herein) but shall run with the land and shall be binding upon and inure to the benefit of the owners of all portions of the Grantee Property and the Easement Area, their mortgagees, any purchaser at a foreclosure sale, each of the successors and assigns of all such parties, as well as the tenants, agents, licensees, guests and invitees of each of them. Notwithstanding anything herein to the contrary, however, Grantee shall be entitled to assign all of the rights and obligations of the Grantee hereunder to either (i) a property owner's association formed with respect to the Grantee Property, or (ii) the owner of any one of Lot 1, Lot 2, Lot 3 or Lot 4 of First Loop Logistics Park, according to the Plat thereof, as

recorded in Plat Book 32, Page 169 of the Public Records of Osceola County, Florida; upon any such assignment pursuant to (ii) above, the "Grantee Property" shall mean and refer to the real property owned by such assignee.

9. **Venue; Waiver of Jury Trial; Attorney's Fees.** Venue of all actions shall lie in Osceola County, Florida. Each party waives the right to a jury trial. In the event of litigation arising under this Agreement, each party will be responsible for their own attorney's fees and costs.

10. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida.

[Signature pages follow]

[GRANTEE SIGNATURE PAGE TO MONUMENT SIGN EASEMENT]

In WITNESS WHEREOF, Grantee has set its hand and seal as of the day and year first above written.

GRANTEE:

FIRST INDUSTRIAL, L.P., a Delaware limited partnership qualified to do business in the State of Florida

By: First Industrial Realty Trust, Inc.,
a Maryland corporation, its sole
general partner

By: _____
Name: Chris Willson
As: Authorized Signatory

[Signature]

Witness

Maitee Salado

Print Name

[Signature]

Witness

María Claudia Schrage

Print Name

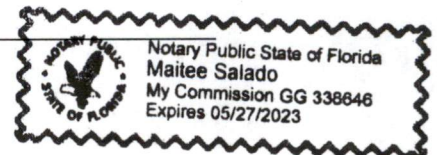
STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15th day of December, 2022 by Chris Willson as Authorized Signatory of First Industrial Realty Trust, Inc., a Maryland corporation, the sole general partner of FIRST INDUSTRIAL, L.P., a Delaware limited partnership qualified to do business in the State of Florida, on behalf of said limited partnership, who is personally known to me or has produced _____ as identification.

[Signature]

Notary Public
Maitee Salado
(Print, Type or Stamp Name)

My Commission Expires: _____



[GRANTOR SIGNATURE PAGE TO MONUMENT SIGN EASEMENT]

CITY OF KISSIMMEE

By: _____

Title: _____

Date: _____

ATTEST: _____

By: _____

City Clerk

Approved as form and legality

City Attorney

Date

STATE OF FLORIDA

COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this _____ day of _____, 2022 by
_____, as _____, who is personally known to me or has
produced _____ as identification.

Notary Public

(Print, Type or Stamp Name)

My Commission Expires: _____

EXHIBIT "A"
DESCRIPTION OF EASEMENT AREA

Exhibit A - 1

DESCRIPTION

A portion of Tract A Pond-1, STORMWATER POND, FIRST LOOP LOGISTICS PARK, according to the plat thereof as recorded in Plat Book 32, Page 169 of the Public Records of Osceola County, Florida. Lying in Section 9, Township 25 South, Range 29 East, Osceola County, Florida. Said parcel being more particularly described as follows:

COMMENCE at the southeast corner of said Tract A Pond-1, being a point on a non-tangent curve concave westerly, having a radius of 1696.94 feet, a central angle of 3° 42' 27" and a chord of 109.78 feet that bears North 15° 24' 03" West; thence along the arc of said curve and westerly right of way line of North John Young Parkway a distance of 109.80 feet to the POINT OF BEGINNING; thence leaving said westerly right of way line, run South 00° 39' 17" West, 4.02 feet; thence North 89° 49' 06" West, 26.88 feet; thence North 00° 54' 58" West, 16.22 feet; thence South 89° 52' 36" East, 23.34 feet to a point on the aforementioned westerly right of way line of North John Young Parkway, being a point on a non-tangent curve concave westerly, having a radius of 1696.94 feet, a central angle of 0° 25' 59" and a chord of 12.83 feet that bears South 17° 28' 15" East; thence along the arc of said curve and westerly right of way line a distance of 12.83 feet to the POINT OF BEGINNING.

Said parcel contains 416 square feet or 0.01 acres, more or less.

NOTES

1. THIS SKETCH OF DESCRIPTION IS NOT A SURVEY.
2. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER LISTED BELOW.
3. THE LAND DESCRIPTION HEREON WAS WRITTEN BY THIS SURVEYOR AT THE DIRECTION OF THE CLIENT.
4. BEARING SHOWN HERE ON ARE BASED ON THE EAST LINE OF NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA. THE BASIS OF BEARING IS: SOUTH 00° 03' 09" WEST



CERTIFICATION

I HEREBY STATE THAT THIS SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; AND THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE FOR FLORIDA SURVEYORS AND MAPPERS, AS SET FORTH IN CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

DATE OF PLAT OR MAP: _____

Wm. David McCrary, JR., P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 4853

SECTION 9, TOWNSHIP 25 SOUTH, RANGE 29 EAST - OSCEOLA COUNTY, FLORIDA


Landmark Center Two
225 E. Robinson St., Suite 300
Orlando, FL 32801
407.839.4006 / FAX 407.839.4008
Licensed Business # 7153
Vanasse Hangen Brustlin, Inc.

DRAWN BY: CAP	CHECKED: WMD
PROJECT # 63590.00	
DRAWING: 63590.00 Sk&Desc Sign Esmt.dwg	
DRAWING DATE: 10/26/2022	
SHEET 1 OF 2	

SKETCH & DESCRIPTION Sign Easement
ISSUED FOR: FIRST INDUSTRIAL LP



0 75 150
1 : 150 U.S. SURVEY FEET

NORTH QUARTER CORNER OF SECTION 9,
TOWNSHIP 25 SOUTH, RANGE 29 EAST

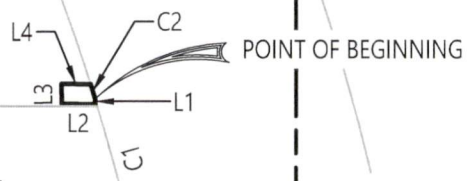
EAST LINE OF THE NORTHWEST
QUARTER OF SECTION 9-25-29

S 00°03'09" W

N JOHN YOUNG PARKWAY
200.00' WIDE PUBLIC RIGHT-OF-WAY
WESTERLY RIGHT OF WAY LINE

TRACT A POND-1
STORMWATER POND
PLAT BOOK 32, PAGE 169

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S 00°39'17" W	4.02'
L2	N 89°49'06" W	26.88'
L3	N 00°54'58" W	16.22'
L4	S 89°52'36" E	23.34'



FLORA BOULEVARD
100.00' WIDE PUBLIC RIGHT-OF-WAY

NOW OR FORMERLY:
KISSIMMEE UTILITY AUTHORITY, A BODY POLITIC
BOOK 1005, PAGE 2744
PARCEL: 09252900U001610000

POINT OF COMMENCEMENT
SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL
RECORDS BOOK 5765, PAGE 2931

CURVE TABLE					
CURVE #	RADIUS	CENTRAL ANGLE	CHORD	CHORD BEARING	LENGTH
C1	1696.94'	3°42'27"	109.78'	N 15°24'03" W	109.80'
C2	1696.94'	0°25'59"	12.83'	S 17°28'15" E	12.83'

SEE SHEET 1 OF 2 FOR DESCRIPTION, CERTIFICATION AND NOTES

SECTION 9, TOWNSHIP 25 SOUTH, RANGE 29 EAST - OSCEOLA COUNTY, FLORIDA



Vanasse Hangen Brustlin, Inc.

Landmark Center Two
225 E. Robinson St., Suite 300
Orlando, FL 32801
407.839.4006 / FAX 407.839.4008
Licensed Business # 7153

DRAWN BY: CAP	CHECKED: WDM
PROJECT # 63590.00	
DRAWING: 63590.00 Sk&Desc Sign Esmt.dwg	
DRAWING DATE: 10/26/2022	
SCALE: 1" = 150'	SHEET 2 OF 2

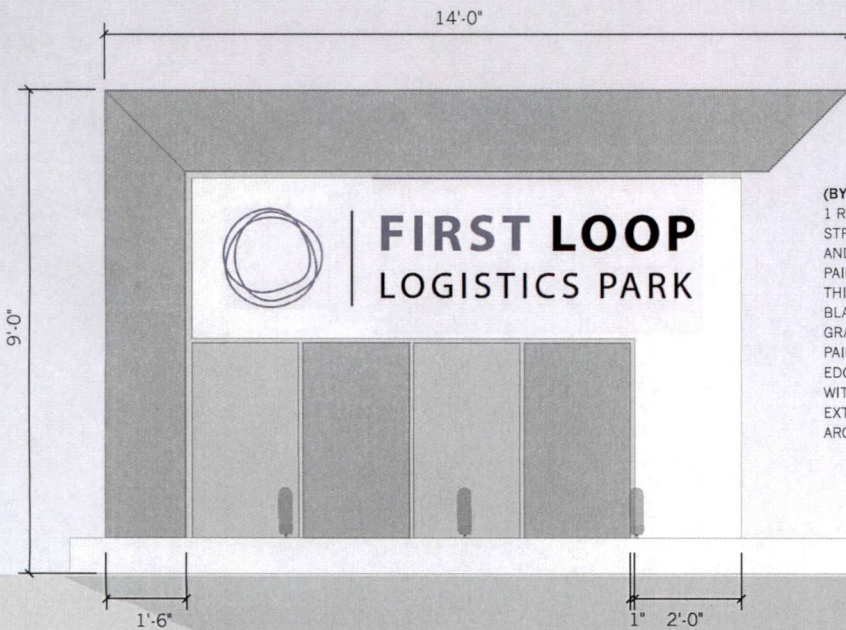
SKETCH & DESCRIPTION
Sign Easement
ISSUED FOR:
FIRST INDUSTRIAL LP

EXHIBIT "B"
INITIAL MONUMENT SIGN

Exhibit B - 1

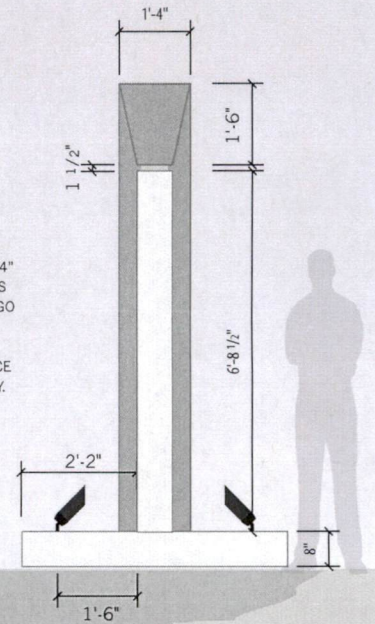
**EXHIBIT
1.0**

FIRST LOOP
PARK KISSIMMEE



(BY LANDLORD)

1 REQUIRED, DOUBLE-FACED SIGN STRUCTURE, OF POURED CONCRETE AND TILT CONCRETE FACE PANEL, PAINTED BY G.C. SIGN LETTERS OF 1/4" THICK ALUMINUM PAINTED MATTHEWS BLACK GLOSS FINISH. FIRST LOOP LOGO GRAPHIC OF 1/4" THK. ALUMINUM PAINTED LOGO GREEN ON FACE AND EDGES, MOUNTED FLUSH TO SIGN FACE WITH THREADED STUDS SET IN EPOXY. EXTERNAL UPLIGHTS BY LANDSCAPE ARCH. OR G.C., ELECTRIC REQUIRED.



1 FRONT ELEVATION - ENTRY MONUMENT SIGN - DOUBLE-SIDED
Scale: 3/8" = 1' - 0"

2 SIDE ELEVATION - ENTRY MONUMENT
Scale: 3/8" = 1' - 0"

tgadesign

4649 ponce de leon blvd, suite 401 coral gables, florida 33146
305.869.2550 www.tgadesign.com



PRIMARY IDENTITY

description:

1

1. 4.18.22
2. 7.11.22
3.
4.

issues & revisions:

1.0

sheet

ITEM 7.J

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

Request

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

Explanation

The City of Kissimmee has been awarded the African American Cultural Historical Grant through the Florida Division of Historical Resources in the amount of \$500,000. There is no City match required. The proposed improvements to Chambers Park Community Center will not only beautify the building, but also enhance its use by the public. The Public Works Facilities Division will manage this construction project, which includes a restroom addition, interior flooring replacement and movable wall partition for more programmable space options.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
15150106-506292	TBD	Increase	\$500,000.00	
15100334-334700		Increase	\$500,000.00	

Financial Summary:

A new project will be created and funds deposited if the grant is accepted by the City Commission. The budget will be amended accordingly.

Recommendation

Staff recommends approval to accept the 2021 African American Cultural and Historical Grant through the Florida Division of Historical Resources for improvements to Chambers Park Community Center, allowing for the City Manager to sign any additional documents related to this grant, and to amend the budget accordingly.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation
Presenter: Mike Steigerwald

Attachment(s):

City of Kissimmee

1. (S) African American Cultural and Historical Grant (AACH) Contract

**GRANT AWARD AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
City of Kissimmee
DPHBBJP7RHY3
23.s.aa.900.040**

This Agreement is by and between the State of Florida, Department of State, hereinafter referred to as the "Department," and the City of Kissimmee hereinafter referred to as the "Grantee."

The Grantee has been awarded an African-American Historical and Cultural Grant by the Department, grant number 23.s.aa.900.040 for the Project "Chambers Park Community Center" in the amount of \$500,000 ("Grant Award Amount"). The Department enters into this Agreement and has the authority to administer this grant in accordance with Section 152 of the 2021-2022 General Appropriations Act and Section 197 of the 2022-23 General Appropriations Act.

Funding for this grant is provided by the federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program established by the American Rescue Plan, Pub. L. No. 117-2 (ARPA), as authorized by the Department of the Treasury. Federal funds disbursed under this program may only be used in compliance with ARPA, Treasury's regulations implementing the Act, applicable provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and all other applicable federal statutes, regulations, and executive orders. For additional information about the SLFRF program, see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number) 21.027.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Grant Purpose.** This grant shall be used exclusively for the "Chambers Park Community Center," the public purpose for which these funds were appropriated.
 - a. The Grantee shall perform the following **Scope of Work**:

Grant funds will be used to redesign and reconstruct a community center in Kissimmee, Florida. Work items will include: permitting, design, inspection, removing existing wood pergola; preparing existing structure for entryway renovation; roofing, reconfiguring gutters and drains, installing walkway covering with double entry doors, patio resurfacing, pouring concrete, installing guardrails/handrails; constructing three (3) new bathrooms to include plumbing, electrical, roof, sewer connection, concrete slab, walls and shingle roof; installing new sliding room partition, and flooring. All tasks associated with the Project shall meet the requirements set forth in this agreement.
 - b. The Grantee agrees to provide the following **Deliverables** and **Performance Measures** related to the Scope of Work for payments to be awarded.

#	Payment Type	Deliverable Description	Documentation	Payment Amount
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1	Fixed Price	Provide one (1) copy of the draft contract with a professional architectural/engineering consultant; one (1) copy of the project timeline to the Department for review and approval; one (1) copy of the Certificate of Completion for participation in the Grants Management Webinar demonstrating a 100/100 score on the AACH Grants Management Quiz; one (1) copy of the SAM.gov entity information form.	One (1) copy of the draft contract with a professional architectural/engineering consultant; one (1) copy of the project timeline to the Department for review and approval; one (1) Certificate of Completion demonstrating a 100/100 score on the AACH Grants Management Quiz; one (1) copy of the SAM.gov entity information form.	\$125,000
2	Fixed Price	Complete and submit a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least thirty percent (30%) of the project completed for review and approval; Photographic documentation of installed project identification sign with Grant Funding Acknowledgement; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	One (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least thirty percent (30%) of the project completed; Photographic documentation of installed project identification sign with Grant Funding Acknowledgement; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$125,000
3	Fixed Price	Complete and Submit one (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least sixty percent (60%) of the project completed; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks	One (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least sixty percent (60%) of the project completed; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$125,000

4	Fixed Price	Complete and submit an Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least one hundred percent (100%) of the project completed, including all retainage amounts paid, for review and approval. In addition, a new/updated FMSF form (for previously extant structures over 50 years old); for the property and executed Restrictive Covenant filed with the County Clerk shall be submitted prior to final payment; a Single Audit Form shall be completed by the Grantee and submitted along with the Final Progress Report prior to final payment; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	One (1) copy of the completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least one hundred percent (100%) of the project completed, including all retainage amounts paid; One (1) copy of the new/updated FMSF form (for previously extant structures over 50 years old); One (1) copy of the executed Restrictive Covenant filed with the County Clerk; One (1) Single Audit Form; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$125,000
Totals				\$500,000

c. The Grantee has provided an Estimated Project Budget based upon reasonable expenditures projected to accomplish the Grantee's Scope of Work and Deliverables outlined in the Agreement. The Budget provides details of how grant and match funds will be spent. All expenditures shall be in accordance with this budget (which is incorporated as part of this Agreement and entitled Attachment A) and must be incurred during the term of this Agreement, as stated in Section 2 of this Agreement.

d. Should grant expenditures vary from the budgeted grant amount for any line item in Attachment A (Estimated Project Budget) by more than 20%, the Grantee shall be required to submit a proposal for revision of the Estimated Project Budget with a written explanation for the reason(s) for deviation(s) from the original Estimated Project Budget to the Division for review and written approval.

2. Length of Agreement. This Agreement shall begin on July 1, 2021, and shall end June 30, 2023, unless terminated in accordance with the provisions of Section 33 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Department approves such extension. The Grantee's written request for such extension must be submitted to the Department no later than thirty (30) days prior to the termination date of this Agreement and no amendment will be valid until a written amendment is signed by both parties as required in Section 7 and Section 15 of this Agreement.

3. Contract Administration. The parties are legally bound by the requirements of this Agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in regard to this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below shall be submitted in writing to the contract manager within 10 days of the change.

For the Department :

Adrienne Morrison Hogan
Florida Department of State
R.A. Gray Building
500 South Bronough Street

Tallahassee, FL 32399
Phone: 850.245.6325
Email: Adrianne.Hogan@dos.myflorida.com

For the Grantee:

Contact: Steve Lackey
Address: 101 Church Street Kissimmee Florida 34741
Phone:
Email: SLACKEY@kissimmee.org

4. **Grant Payments.** All grant payments are requested online via <https://dosgrants.com/> by submitting a payment request with documentation that the deliverable has been completed. The total grant award shall not exceed the Grant Award Amount, which shall be paid by the Department in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. Grant payment requests are not considered complete for purposes of payment until review of the deliverables for compliance with the terms and conditions of this Agreement by the appropriate Department staff is complete and approval of the deliverable given. The grant payment schedule is outlined below:
 - a. All payments will be made in the amounts identified with the Deliverables in Section 1 of this agreement.
 - b. All payments will be made in accordance with the completion of those Deliverables.
5. **Electronic Payments.** The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services (DFS). If EFT has already been set up for the organization, the Grantee does not need to submit another authorization form unless the organization has changed bank accounts. The authorization form is accessible at https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/vendors/vendor-relations/dfs-a1-26e-direct-deposit-vendors.pdf?sfvrsn=eff728cf_16 where information pertaining to payment status is also available.
6. **Florida Substitute Form W-9.** A completed Substitute Form W-9 issued by DFS is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. DFS must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit <http://www.flvendor.myfloridacfo.com/>. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted to the Department, as required, in advance of or with the executed Agreement.**
7. **Amendment to Agreement.** Either party may request modification of the provisions of this Agreement by contacting the Department to request an Amendment to the Contract. **Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.** If changes are implemented without the Department's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement.
8. **Financial Consequences.** The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.
 - a. Payments will be withheld for failure to complete services as identified in the Scope of Work and Deliverables, provide documentation that the deliverable has been completed, or demonstrate the appropriate use of state or federal funds.
 - b. If the Grantee has spent less than the Grant Award Amount in state or federal funds to complete the Scope of Work, the final payment will be reduced by an amount equal to the difference between spent state or federal dollars and the Grant Award Amount.
 - c. The Division may reduce individual payments by 10% if the completed deliverable is not consistent with any applicable historic preservation standards as outlined in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation available online at <https://www.nps.gov/subjects/historicpreservation/standards.htm> or applicable industry standards.

The Department shall reduce total grant funding for the Project in direct proportion to any required match contributions not met by the end of the grant period. This reduction shall be calculated by dividing the actual match amount by the required match amount indicated in the Agreement and multiplying the product by the Grant Award Amount indicated in the Agreement. Pursuant to Section 17, Grantee shall

refund to the Department any excess funds paid out prior to a reduction of total grant funding.

9. Additional Special Conditions.

a) For all projects involving **development activities**, the following special conditions apply:

- i. All project work shall be completed under the supervision of a licensed architect or licensed contractor.
- ii. All project work affecting a Historic Property must be in compliance with the **Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation** available online at:
<https://www.nps.gov/subjects/historicpreservation/standards.htm>
- iii. The Grantee shall provide photographic documentation of the Project activity. Guidelines regarding the photographic documentation are available online at <https://dos.myflorida.com/historical/grants/special-category-grants/>
- iv. Architectural Services
 - A. All projects shall require contracting for architectural/engineering services.
 - B. The Grantee may request a waiver of this requirement from the Department if they believe that the architectural/engineering services are not needed for the Project. The Department shall make a recommendation to the Grantee after review of the proposed work.
- v. Architectural Documents and Construction Contracts

The Grantee shall submit the architectural services contract to the Department for review and approval prior to final execution. In addition, pursuant to *Section 267.031(5)(i), Florida Statutes*, the Grantee shall submit architectural planning documents to the Department for review and approval at the following stages of development:

- A. Upon completion of **schematic design**;
 - B. Upon completion of **design development and outline specifications**; and
 - C. Upon completion of **100% construction documents and project manual**, prior to execution of the construction contract.
- vi. For the construction phase of the Project, in addition to the review submissions indicated above, a copy of the construction contract must be submitted to the Department for review and approval prior to final execution. Department review and approval of said contracts shall not be construed as acceptance by or imposition upon the Department of any financial liability in connection with said contracts.
 - vii. For projects involving ground disturbance (examples include: historic building or structure relocation, grading and site work, installation of sewer and water lines, subgrade foundation repairs or damp proofing, construction of new foundations and installation of landscape materials), the Grantee shall ensure that the following requirements are included in all contracts for architectural and engineering services:
 - A. Ground disturbance around historic buildings or elsewhere on the site shall be minimized, thus reducing the possibility of damage to or destruction of significant archaeological resources.
 - B. If an archaeological investigation of the Project site has not been completed, the architect or engineer shall contact the Department for assistance in determining the actions necessary to evaluate the potential for adverse effects of the ground disturbing activities on significant archaeological resources.
 - C. Significant archaeological resources shall be protected and preserved in place whenever possible. Heavy machinery shall not be allowed in areas where significant archaeological resources may be disturbed or damaged.
 - D. When preservation of significant archaeological resources in place is not feasible, a mitigation plan shall be developed in consultation with and approved by the Division of Historical Resources, Bureau of Historic Preservation's Compliance Review

Section (contact information available online at www.flheritage.com). The mitigation plan shall be implemented under the direction of an archaeologist meeting the *Secretary of the Interiors' Professional Qualification Standards for Archaeology*.

- E. Documentation of archaeological investigation and required mitigation actions shall be submitted to the Compliance Review Section for review and approval. This documentation shall conform to the *Secretary of the Interior's Standards for Archaeological Documentation*, and the reporting standards of the Compliance Review Section set forth in *Chapter 1A-46, Florida Administrative Code*.

b) For all projects involving **survey activities**, the following special conditions apply:

- i. The Grantee shall submit survey contracts to the Department for review and approval prior to execution.
- ii. A 1A-32 permit must be obtained from the Division of Historical Resources, Bureau of Archaeological Research prior to the beginning of fieldwork conducted in state lands and a copy submitted to the Department, if applicable.
- iii. For historical structure and archaeological surveys, the Grantee shall follow the historic structure and archaeological survey guidelines as outlined in the documents found online at <https://dos.myflorida.com/historical/grants/small-matching-grants/>. The survey report shall conform to *Chapter 1A-46, Florida Administrative Code*.

c) Federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program Grant Subrecipients must comply with the Federal Special Conditions contained in Attachment C.

10. Credit Line(s) to Acknowledge Grant Funding. Pursuant to Section 286.25, *Florida Statutes*, in publicizing, advertising, or describing the sponsorship of the program the Grantee shall include the following statement:

- a. "This project is sponsored in part by the Department of State and the State of Florida." Any variation in this language must receive prior approval in writing by the Department.
- b. All site-specific projects must include a Project identification sign, with the aforementioned language, that must be placed on site. The cost of preparation and erection of the Project identification sign are allowable project costs. Routine maintenance costs of Project signs are not allowable project costs. A photograph of the aforementioned sign must be submitted to the Department as soon as it is erected.

11. Encumbrance of Funds. The Grantee shall execute a binding contract for at least a part of the Scope of Work within six (6) months from the date of execution of this Agreement, except as allowed below.

- a. Extension of Encumbrance Deadline: The encumbrance deadline indicated above may be extended by written approval of the Department. To be eligible for this extension, the Grantee must demonstrate to the Department that encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above.
- b. Encumbrance Deadline Exception: For projects not involving contract services the Grantee and the Department shall consult on a case-by-case basis to develop an acceptable encumbrance schedule.

12. Grant Reporting Requirements. The Grantee must submit the following reports to the Department. All reports shall document the completion of any deliverables/tasks, expenses and activities that occurred during that reporting period. All reports on grant progress will be submitted online via <https://dosgrants.com/>. If the Grant Period end date set forth in Section 2 is extended in accordance with the requirements of Section 7 and Section 15 of this Agreement, additional quarterly progress reports shall be submitted until the expiration of the Grant Period.

- a. **First Project Progress Report** is due by July 15, 2022, for the period April 1 - June 30, 2022.
- b. **Second Project Progress Report** is due by October 15, 2022, for the period July 1 - September 30, 2022.
- c. **Third Project Progress Report** is due by January 15, 2023, for the period October 1 - December 31, 2022.

- d. **Fourth Project Progress Report** is due by April 15, 2023 for the period ending January 1 - March 31, 2023.
- e. **Fifth Project Progress Report** is due by July 15, 2023, for the period ending April 1 - June 30, 2023.
- f. **Final Report.** The Grantee must submit a Final Report to the Division within one month of the Grant Period End Date set forth in Section 2 above. All final reports must document the completion of all deliverables/tasks, expenses and activities that occurred by the Grant Period End Date. The Grantee may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state or federal financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds, including, but not limited to, this Agreement, the *Reference Guide for State Expenditures*, and 2 CFR Part 200.
- 13. Matching Funds.** Grantee is not required to provide matching funds if the Grant Award Amount is equal to or less than \$500,000. *However*, if the Grant Award Amount is greater than \$500,000, Grantee is required to provide a 50% match of the amount above \$500,000. The Grantee is responsible for any matching funds included in the budget in Attachment A, whether required or voluntary. The Grantee must submit documentation that the match requirements of this Agreement have been met and provide to the Department documentation evidencing expenses incurred to comply with this requirement.
- 14. Grant Completion Deadline.** The grant completion deadline is the end date of this Agreement set forth in Section 2 above. The Grant Completion Deadline is the date when all grant and any required matching funds have been paid out or incurred in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, an Amendment to the Agreement must be executed as per Section 7, and the stipulations in Section 15 must be met.
- 15. Extension of the Grant Completion Deadline.** An extension of the completion date must be requested at least thirty (30) days prior to the end of the Grant Period and may not exceed six (6) months, unless the Grantee can clearly demonstrate extenuating circumstances: *provided, however*, that under no circumstances may this Agreement be extended beyond the period of performance for use of SLFRF funds, as set forth by the Department of the Treasury. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the Project such as a natural disaster, death or serious illness of the individual responsible for the completion of the Project, litigation related to the Project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Changes to the original completion deadline shall be valid only when requested in writing, approved by the Department, and an Amendment to the Agreement has been executed by both parties and attached to the original of this Agreement. The Grantee must provide documentation that a portion of the grant funds and match contributions are encumbered and demonstrate to the satisfaction of the Department that project work is progressing at a rate such that completion is achievable within the extended Grant Period.
- 16. Non-allowable Grant Expenditures.** The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures (grant and match) shall be in compliance with applicable federal and state statutes, regulations, the program guidelines, and this agreement. The following categories of expenditures are non-allowable for expenditure of grant funds and as contributions to required match:
- a) Expenditures for work not included in the Scope of Work of the executed Grant Award Agreement;
 - b) Costs of goods and services not procured in accordance with procurement procedures set forth in the Grant Award Agreement and 2 CFR Part 200;
 - c) Expenses incurred or obligated prior to or after the Grant Period, as indicated in the Grant Award Agreement;
 - d) Expenditures of state or federal financial assistance not in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds as outlined in the Department of Financial Services' Reference Guide for State Expenditures (revised 11/1/2019) and 2 CFR Part 200.
 - e) Expenses associated with lobbying or attempting to influence Federal, State or local legislation, the judicial branch or any state agency;
 - f) For project activities directed at a Historic Property, expenditures for work not consistent with the applicable historic Preservation Standards as outlined in the Secretary of the Interior's Guidelines available at www.nps.gov/tps/standards/treatment-guidelines-2017.pdf, standards available at <http://www.nps.gov/tps/standards.htm> and [nps.gov/history/local-law/arch_stnds_0.htm](http://www.nps.gov/history/local-law/arch_stnds_0.htm) or applicable

industry standards;

- g) Costs for projects having as their primary purpose the fulfillment of Federal or State regulatory requirements, including costs of consultation and mitigation measures required under Section 106 of the National Historic Preservation Act of 1966, as amended, or under Section 267.031, F.S.;
- h) Projects directed at activities or Real Properties that are restricted to private or exclusive participation or access, which shall include restricting access on the basis of sex, race, color, religion, national origin, disability, age, pregnancy, handicap or marital status;
- i) Entertainment, food, beverages, plaques, awards or gifts;
- j) Costs not documented in accordance with the provisions of the Grant Award Agreement;
- k) Indirect costs including Grantee overhead, management expenses, general operating costs and other costs that are not readily identifiable as expenditures for the materials and services required to complete the work identified in the Scope of Work in the Grant Award Agreement. Examples of indirect costs include: rent/mortgage, utilities, janitorial services, insurance, accounting, internet service, monthly expenses associated to security systems, non-grant related administrative and clerical staffing, marketing and fundraising activities;
- l) Administrative and project management expenditures such as expenditures that are directly attributable to management of the grant-assisted Project and meeting the reporting and associated requirements of the Grant Award Agreement;
- m) Grantee operational support (i.e., organization salaries not directly related to grant activities; travel expenditures; per diem; or supplies);
- n) Insurance costs (Exception: costs for builder's risk, workers' compensation and contractor's liability insurance);
- o) Capital improvements to the interior of Religious Properties (Exception: repairs to elements of the structural system. Examples include: foundation repairs, repairs to columns, load bearing wall framing, roof framing, masonry repairs, window and exterior door repairs and restoration practices associated with the building envelope);
- p) Accessibility improvements for Religious Properties;
- q) Parking facilities, sidewalks, walkways, and trails that are the entire scope of work; landscaping; fabrication or design of exhibits; or commercial projects (coffee shops, cafés, and gifts shops as part of the facility are allowable);
- r) Furniture and equipment unnecessary to furnish and operate a new or improved facility as part of a Fixed Capital Outlay project. Specific prior approval must be granted by the Department for all expenditures for furniture and equipment;
- s) Costs associated with attending or hosting conferences, summits, workshops or presentations (Exception: municipal or county required public meetings necessary for completion of the grant assisted project);
- t) Travel expenditures, including those of personnel responsible for items of work approved by the Department, administrative personnel, contracted or subcontracted employees, either for purposes of work on-site or research off-site; and
- u) Tuition waivers, fees, and other non-grant related costs associated with employing students for grant projects.

17. Unobligated and Unearned Funds and Allowable Costs. In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state or federal financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds, including, but not limited to, the *Reference Guide for State Expenditures* and 2 CFR Part 200.

18. Repayment. All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: African-American Cultural and Historical Grant Program, Department of State, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Grantee shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. Single Audit Act. The Grantee is required to complete a Single Audit Act certification form through the Department of State grants management system at <https://dosgrants.com/>. Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to 2 CFR 200, Subpart F - Audit Requirements, and Section 215.97, *Florida Statutes*. See Attachment B for additional information regarding this requirement.

20. Retention of Accounting Records. Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of five (5) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the five-year period, the records shall be retained until the litigation, audit, or claim has

been resolved.

- 21. Obligation to Provide State Access to Grant Records.** The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Department or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.
- 22. Obligation to Provide Public Access to Grant Records.** The Department reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Department's Contract Manager for assistance if it receives a public records request related to this Agreement.
- 23. Restrictive Covenants.** The Grantee and the Property Owner(s), if different, shall execute and file Restrictive Covenants with the Clerk of the Circuit Court in the county where the property is located, prior to initial release of final payment. The Restrictive Covenants shall include at a minimum the following provisions:
- a. The Restrictive Covenants shall run with the title of the property, shall encumber the property and shall be binding upon the Grantee and the Property Owner(s), if different, and their successors in interest for ten (10) years from the date of the recordation of the Restrictive Covenants for projects involving improvements to Real Property.
 - b. The Grantee and Property Owner(s) shall permit the Department to inspect the property at all reasonable times to determine whether the Grantee and Property Owner(s) are in compliance with the terms of the Restrictive Covenants.
 - c. In the case of Historic Properties, the Grantee and Property Owner(s) shall maintain the property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - d. In the case of Cultural Facilities, the Grantee and Property Owner(s) shall maintain the property as a building which is be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines defined in Section 265.283(7), Florida Statute. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - e. The Grantee and Property Owner(s) agree that no modifications will be made to the property, other than routine repairs and maintenance, without advance review and approval of the plans and specifications by the Department.
 - f. The Restrictive Covenants shall contain the following amortization schedule of the repayment of grant funds, should the Grantee or Property Owner(s) or their successors in interest violate the Restrictive Covenants.
 - i. Amortization Schedule for projects involving improvements to Real Property:
If the violation occurs within the first five (5) years of the effective date of these covenants, the Department shall be entitled to return of the entire grant amount. If the violation occurs after the first five (5) years, the Department shall be entitled to return of the entire grant amount, less 10% for each year past the first five (5).
 - g. Other provisions as agreed upon by the Department and the Grantee.
- 24. Noncompliance with Grant Requirements.** Any Grantee that has not submitted required reports or satisfied other administrative requirements for this grant or other grants from any other Florida Department of State (DOS) Division will be in noncompliance status and subject to the DOS Grants Compliance Procedure. Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any DOS grant may be released.
- 25. Accounting Requirements.** The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:
- a. The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure

of state funds;

- b. Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Department.
 - c. An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.
 - d. The name of the account(s) must include the grant award number;
 - e. The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and
 - f. Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).
- 26. Availability of Funds.** The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature, or the United States Congress in the case of a federally funded grant. In the event that the state or federal funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Department shall have no further liability to the Grantee, beyond those amounts already released prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.
- 27. Independent Contractor Status of Grantee.** The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.
- 28. Grantee's Subcontractors.** The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Department shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be agents, servants, joint ventures, or partners of the Department.
- 29. Liability.** The Department will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Department.
- a. The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee, other than a Grantee which is the State or the State's agencies or subdivisions, as defined in Section 768.28, *Florida Statutes*, shall indemnify and hold the Department harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with that Section.
 - b. Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.
 - c. The Department shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
 - d. The Grantee shall be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

30. Strict Compliance with Laws. The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations of the local, state and federal law.

31. No Discrimination. The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, color, religion, gender, national origin, age, pregnancy, disability or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.

32. Breach of Agreement. The Department will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.

33. Termination of Agreement.

a. Termination by the Department. The Department will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Department will provide the Grantee a notice of its violation by letter, and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Department will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Department terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Department deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Department, with interest, within thirty (30) days after termination of this Agreement. The Department does not waive any of its rights to additional damages, if grant funds are returned under this Section.

b. Termination for convenience. The Department or the Grantee may terminate the grant in whole or in part when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated.

c. Termination by Grantee. The Grantee may unilaterally cancel the grant at any time prior to the first payment on the grant although the Department must be notified in writing prior to cancellation. After the initial payment, the Project may be terminated, modified, or amended by the Grantee only by mutual agreement of the Grantee and the Department. Request for termination prior to completion must fully detail the reasons for the action and the proposed disposition of the uncompleted work.

34. Preservation of Remedies. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.

35. Non-Assignment of Agreement. The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Department, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the Project. If the Department approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Department to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.

36. Required Procurement Procedures for Obtaining Goods and Services.

a. The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project. Procurement documentation supporting maximum open competition must be submitted to the Department for review and approval prior to execution of project contracts.

- b. Grantee's procurement standards must be consistent with 2 C.F.R. §§ 200.317 – 200.327, as applicable. All procurement transactions for goods or services must be conducted in a manner providing full and open competition, consistent with the standards outlined in 2 C.F.R. §200.320, which allows for non-competitive procurements only in circumstances where at least one of the four applicable conditions provided are met; *provided, however*, that 2 C.F.R. §200.320(c)(4) is not applicable to SLFRF program awards.

- 37. **Conflicts of Interest.** The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.
- 38. **Binding of Successors.** This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Department of State.
- 39. **No Employment of Unauthorized Aliens.** The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- 40. **Severability.** If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.
- 41. **Americans with Disabilities Act.** All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990 as amended (42 U.S.C. 12101, *et seq.*), which is incorporated herein by reference.
- 42. **Governing Law.** This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

43. Entire Agreement. The entire Agreement of the parties consists of the following documents:

- a. This Agreement
- b. Estimated Project Budget (Attachment A)
- c. Single Audit Act Requirements and Exhibit I (Attachment B)
- d. Federal Special Conditions (Attachment C)
- e. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (Attachment D)

In acknowledgment of this grant, provided from funds appropriated in the Florida FY2021-22 General Appropriation Act, the Florida FY2022-23 General Appropriation Act and the federal Coronavirus State Fiscal Recovery Fund (Public Law 117-2), I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State:	Grantee:
By: _____	By: _____
	Authorizing Official for the Grantee
Division Director _____	_____
Division of _____	Typed name and title
_____	_____
Date	Date

ATTACHMENT A

Estimated Project Budget

Description	Grant Funds	Cash Match	In Kind Match
Other			
Design	\$25,000	\$0	\$0
Permitting	\$10,000	\$0	\$0
Construction inspection	\$15,000	\$0	\$0
Entryway renovation (including demolition, prep existing structure, roof re-design, covered walkway, double door entry, gutter/drain/reconfiguration, resurfacing patio, guardrails/handrails)	\$110,000	\$0	\$0
Three (3) new restrooms (including concrete slab, walls, roofing, plumbing, AC, electrical and sewer connections)	\$250,000	\$0	\$0
Interior flooring (materials and installation)	\$70,000	\$0	\$0
One (1) sliding partition	\$20,000	\$0	\$0
<i>Subtotals</i>	<i>\$500,000</i>	<i>\$0</i>	<i>\$0</i>
Totals	\$500,000	\$0	\$0

ATTACHMENT B

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

Part I: Federally Funded

This part is applicable if the recipient is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A recipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this agreement lists the federal resources awarded through the Department of State by this agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of State. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

U.S. Government Printing Office www.ecfr.gov

Part II: State Funded

This part is applicable if the recipient is a nonstate entity as defined by section 215.97(2), F.S.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement lists the state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than state entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department of Financial Services (Chief Financial Officer)

<http://www.myfloridacfo.com/>

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act) <http://www.leg.state.fl.us/>

Part III: Report Submission

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this agreement shall be submitted, when required by 2 CFR §200.512, by or on behalf of the recipient directly to each of the following:
 - A. The Department of State through the <https://dosgrants.com/> grants management system.
 - B. The Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.
2. Copies of financial reporting packages required by Part II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:
 - A. The Department of State through the <https://dosgrants.com/> grants management system.
 - B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401

111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Any reports, management letters, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
4. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

Part IV: Record Retention

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, the CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, the CFO, or Auditor General upon request for a period of at least three years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Assistance Listing number (formerly known as CFDA number) 21.027. \$500,000

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As contained in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and 31 CFR Part 35, Subpart A – Coronavirus State and Local Fiscal Recovery Funds.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Not applicable

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Not applicable.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Not applicable.

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Not applicable.

ATTACHMENT C

FEDERAL SPECIAL CONDITIONS

In addition to the terms and conditions contained in this agreement and the program guidelines generally applicable to grants awarded by the Department, African-American Cultural and Historical Grants, as federal pass-through grants, are also subject to additional federal requirements for use of SLFRF funds. The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the “Uniform Guidance”). In all instances, Applicant Organizations should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects.

The following sections provide a general summary of compliance responsibilities under applicable federal statutes and regulations, including the Uniform Guidance, as described in the 2020 OMB Compliance Supplement Part 3. Compliance Requirements (issued August 18, 2020). Note that the descriptions below are only general summaries and all recipients and subrecipients of SLFRF funds are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

Grantee, as a subrecipient of federal funds, should ensure they remain in compliance with all SLFRF Award Terms and Conditions.

1. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. As such, the Department will implement robust internal controls and effective monitoring of subrecipients to ensure compliance with the Cost Principles, which are important for building trust and accountability. SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.
2. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury’s implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9). As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.
3. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds (as approved by the Department) must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
4. **Period of Performance.** All SLFRF funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.
5. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive

bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

6. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records. The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.
7. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles. In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting to the Department, for use in its required reporting to Treasury.
8. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.
9. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats. Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").
10. **Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.
11. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23. In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

12. **General Federal Regulations.** Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 110 *et sequence*.
13. **Rights to Patents and Inventions Made Under a Contract or Agreement.** Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.
14. **Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175).** Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:
- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
15. **Whistleblower Protection.** Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).
- i. This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - ii. Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - iii. The Recipient shall insert this clause, including this paragraph C, in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph C in any subawards and contracts awarded prior to the effective date of this provision.
16. **Notification of Termination (2 CFR § 200.340).** In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.
17. **Additional Lobbying Requirements.**
- i. The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
 - ii. The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
 - iii. Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this

Agreement for membership dues to any entity or organization engaged in lobbying activities.

18. **Compliance with Assurances.** Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.
19. **Federal Reporting Requirements (FFATA).** Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act (“FFATA”) of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.
20. **2 CFR Part 200 Appendix 2 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards** In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.
- i. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - ii. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - iii. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#) all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” [60 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#) “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 - iv. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#) and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#) “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#) “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- The Davis-Bacon Act requirements do not apply to projects funded solely with award funds from the SLFRF. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act.**
- v. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of

a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- vi. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- vii. Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- viii. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- ix. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- x. Procurement of Recovered Materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- xi. Prohibition on Certain Telecommunications and video surveillance services or equipment. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - A. Procure or obtain;
 - B. Extend or renew a contract to procure or obtain; or
 - C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- D. In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. See [Public Law 115-232](#), section 889 for additional information.
- F. See also 2 CFR [§ 200.471](#).
- xii. Domestic Preferences for Procurements.
- A. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- B. For purposes of this section:
1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

ATTACHMENT D

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ITEM 7.K

Interlocal Agreement with Osceola County and Tohopekaliga Water Authority Pertaining to the Acquisition of Retail Water, Wastewater, and Reclaimed Water Retail Services of the Sunbridge Stewardship District

Request

Staff requests approval of an interlocal agreement with Osceola County and Tohopekaliga Water Authority related to the acquisition of retail water, wastewater, and reclaimed water retail services for the Sunbridge Stewardship District.

Explanation

The Sunbridge Stewardship District is considered an independent special district and, as such, has the right to provide water, wastewater and reclaimed water services to customers within its boundaries. The District desires to franchise these services to the Toho Water Authority (TWA). The purpose of this Agreement is to adjust the Annual Transfer Amount to be paid by TWA to the County and the City with respect to the revenues to be collected by TWA for the provision of retail water service to the District by the cost to TWA of acquiring these retail services through payment of the franchise fee. Since this area is not currently within TWA's service area, the City and County both stand to realize a significant financial benefit through TWA's acquisition of the retail utility rights for the District. This would be achieved by establishing the basis of the Annual Transfer Amount on the retail revenue instead of the wholesale revenue that would otherwise be paid via the wholesale agreement TWA currently has in place to sell water to the District.

Recommendation

Staff recommends approval of this Interlocal Agreement.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter: Mike Steigerwald

Attachment(s):

1. (S) Interlocal Agreement Sunbridge Stewardship District Osceola County Toho 6-29-22 (R)

Prepared by or under the direction of, and
Return to:
Anthony Cotter, General Counsel
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

**INTERLOCAL AGREEMENT
AMONG
OSCEOLA COUNTY
THE CITY OF KISSIMMEE
and the
TOHOPEKALIGA WATER AUTHORITY
pertaining to the
ACQUISITION OF RETAIL WATER, WASTEWATER, AND
RECLAIMED WATER RETAIL SERVICES
from the
SUNBRIDGE STEWARDSHIP DISTRICT**

This Interlocal Agreement (“Agreement”) is entered into as of the Effective Date, as defined below, among **Osceola County, Florida**, a political subdivision of the State of Florida (the “County”), the **City of Kissimmee, Florida**, a municipal corporation existing under the laws of the State of Florida, (the “City”), and the **Tohopekaliga Water Authority**, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, (“Toho”). Osceola, Kissimmee and Toho may be referred to individually as a “Party” and collectively as the “Parties.”

Whereas, the Parties entered into the Tohopekaliga Transition Interlocal Agreement, dated July 1, 2003 (the “Transition Agreement”), a copy of which is attached hereto as **Attachment A** and incorporated herein in its entirety.

Whereas, under the Transition Agreement, the County and the City transferred to Toho (i) all “Utility Assets” in the incorporated and unincorporated areas of the County, and (ii) the duty and obligation for Toho to operate the “Utility Assets” and provide “Utility Service” in such areas.

Whereas, under a wholesale water, wastewater and reclaimed water agreement (the “Wholesale Agreement”) among Tavistock East II, LLC, Tavistock East Holdings, LLC, and Tavistock East Services, LLC (collectively “Tavistock”) and Toho, Tavistock provides retail water service to land located in the County known as the Sunbridge Stewardship District (the “District”).

Whereas, by virtue of both the Transition Agreement and the Wholesale Agreement being in place, the County and the City each receive an annual payment from Toho called the “Annual

Transfer Amount” which equals 12% of Toho’s “Annual Authority Gross Revenues” which are revenues based upon the value of the services provided by Toho to the District.

Whereas, the District is an independent special district created by the Florida Legislature pursuant to Chapter 2017-220, Laws of Florida, located within the area depicted in **Attachment B**.

Whereas, Toho and Tavistock are negotiating a Water, Wastewater and Reclaimed Water Acquisition Agreement (the “Tavistock Acquisition Agreement”) under which Toho will acquire and assume the responsibilities for, among other things, the retail water service to the lands located within the District.

Whereas, Toho and the District are negotiating a Water, Wastewater and Reclaimed Water Acquisition Agreement (the “District Acquisition Agreement”) under which Toho will acquire and assume the responsibilities for, among other things, the retail water service to the lands located within the District.

Whereas, the Wholesale Agreement, the Tavistock Acquisition Agreement, and the District Acquisition Agreement provide for payment of a franchise fee by Toho within the District and that franchise fee constitutes 2% of the retail revenues of utility sales within the District in order to guarantee Toho the right to serve water, wastewater, and irrigation water services throughout the District.

Whereas, the purpose of this Agreement is to adjust the Annual Transfer Amount to be paid by Toho to the County and the City with respect to the revenues to be derived by Toho for Toho’s provision of retail water service to the District by the cost to Toho of acquiring these retail services through payment of the franchise fee.

Whereas, the City and County both realize a significant financial benefit through Toho’s acquisition of the retail utility rights for the District by establishing the basis of the Annual Transfer Amount based on the retail revenue instead of the wholesale revenue as available through the Wholesale Agreement.

Now therefore, in consideration of the terms, conditions, promises, covenants and payments hereinafter set forth, the County, the City, and Toho agree as follows:

1. **Recitals Incorporated.** The above recitals are true and correct and incorporated herein.
2. **Terms Defined in the Transition Agreement.** Unless the context otherwise requires or unless otherwise expressly defined herein, the terms defined in the Transition Agreement, attached hereto as **Attachment A**, have the same meanings whenever used in this Agreement.

3. **Adjustment to the Annual Transfer Amount.**

a. Under the Transition Agreement, the Annual Transfer Amount is a calculation determined as follows: “Annual Transfer Amount” means the amount remaining, if any, after first subtracting the City System Transfer Amount and then subtracting the County Transfer Amount from the Maximum Annual Transfer. “Maximum Annual Transfer” means twelve percent (12%) of the Annual Authority Gross Revenues or the City System Transfer Amount, whichever is greater.

b. For the entire time of which Toho is required to pay a franchise fee related to the retail services in the District, Toho’s payment of the Annual Transfer Amount shall be reduced by an amount equivalent to 2% of the Annual Authority Gross Revenues from Toho’s provision of retail water services within the District.

c. This adjustment shall not affect the Annual Transfer Amount paid by Toho to the County and City related to services provided by Toho outside of the boundaries of the District.

d. Beginning on the Effective Date, the Annual Transfer Amount paid by Toho to the County and the City will be computed using the adjusted Annual Authority Gross Revenues for the Sunbridge Stewardship District. Until the Effective Date, the Annual Transfer Amount paid by Toho shall remain as-is, under the Transition Agreement.

4. **Effective Date.** The Effective Date of this Agreement is the last date that all of the following occur:

a. The Tavistock Acquisition Agreement is approved and signed by all of the parties thereto;

b. The District Acquisition Agreement is approved and signed by all of the parties thereto;

c. This Agreement is approved and signed by all of the Parties; and

d. The date that this Agreement is recorded with the Clerk of the Circuit Court in and for Osceola County, Florida, in accordance with subsection 163.01(11), Florida Statutes. Toho, at its sole cost, is responsible for recording a fully executed original of this Agreement.

If all of the foregoing do not occur on or before January 31, 2023, this Agreement shall expire and shall be deemed repealed in its entirety without further action by any of the Parties.

5. **Term.** The Term of this Agreement begins on the Effective Date and continues from year-to-year until (i) the Annual Transfer Amount is no longer paid by Toho under the Transition Agreement, (iii) Toho ceases to pay the franchise fee obligation per the Tavistock and District Acquisition Agreements, or (iii) Toho ceases to be the retail water service provider for

the Sunbridge Stewardship District, whichever occurs first, at which time this Agreement will automatically expire.

6. **Notices.** The Parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, or address provided by the other Party, shall constitute sufficient notice. All notices required and/or made pursuant to this Agreement shall be in writing and given by way of hand delivery or the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Osceola:	Osceola County Attn.: County Manager 1 Courthouse Square, Suite 4700 Kissimmee, Florida 34741
Copy to:	Osceola County Attn: County Attorney's Office 1 Courthouse Square, Suite 4700 Kissimmee, Florida 34741
Kissimmee:	City of Kissimmee Attn.: City Manager 101 Church Street Kissimmee, Florida 34741
Copy to:	City of Kissimmee Attn: City Attorney 101 Church Street Kissimmee, Florida 34741
Toho:	Tohopekalgia Water Authority Attn.: Executive Director 951 Martin Luther King Boulevard Kissimmee, Florida 34741
Copy to:	Tohopekalgia Water Authority Attn: General Counsel 951 Martin Luther King Boulevard Kissimmee, Florida 34741

7. **Effect of Prior Agreements.** This Agreement contains the entire understanding between the Parties regarding the adjustment to the calculation of the Annual Transfer Amount with respect to the Sunbridge Utility District, but it does not supersede or modify any other terms and conditions of the Transfer Agreement, attached hereto as **Attachment A**.

8. **Sovereign Immunity.** The Parties acknowledge and agree that nothing in this Agreement shall in any way waive each Party's sovereign immunity provided for under section 768.28, Florida Statutes, or the associated rights, benefits, and immunities afforded therein.

9. **Governing Law; Venue.** The laws of the State of Florida shall govern the validity and interpretation of this Agreement. Venue for any legal action by either Party to interpret, construe or enforce this Agreement must be in a court of competent jurisdiction in and for Osceola County, Florida.

10. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each Party must bear its own attorney's fees and costs.

11. **Severability.** All provisions in this Agreement are to be interpreted independently. If a provision is determined to be illegal, void or unenforceable by a court having jurisdiction over the matter, all other provisions in this Agreement remain in full force and effect and shall be binding on the Parties.

12. **Counterparts.** This Agreement may be executed in counterparts. The Parties shall execute this Agreement in triplicate, each of which shall be deemed an original Agreement. Each Party shall retain one fully executed original.

[signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be duly executed, by and through their authorized representatives, on the respective dates set forth below.

**BOARD OF COUNTY COMMISSIONERS
OSCEOLA COUNTY, FLORIDA,**
a political subdivision of the State of Florida

(SEAL)

By: _____
Chair/Vice Chair

Date: _____

ATTEST:

Clerk/Deputy Clerk of the Board

As authorized for execution by the Board
of County Commissioners meeting of:

CITY OF KISSIMMEE, FLORIDA,
a municipal corporation of the State of Florida

(SEAL)

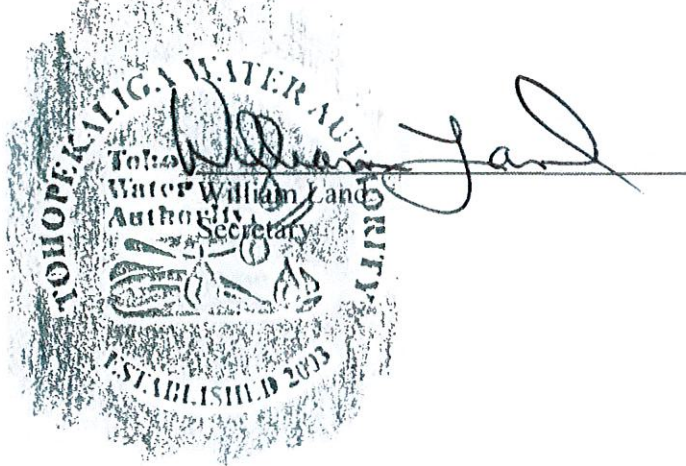
By: _____
Olga Gonzalez, Mayor / Commissioner

Date: _____

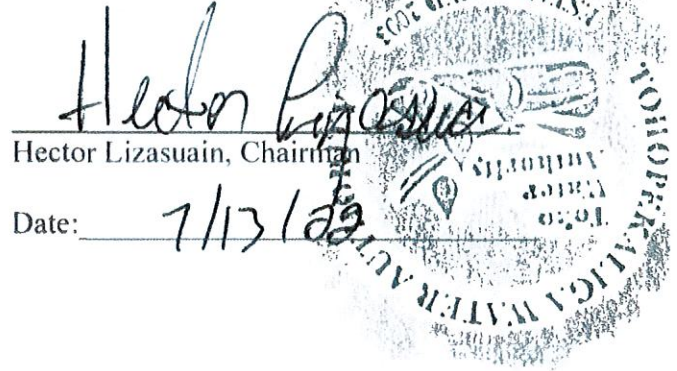
ATTEST:

City Clerk

ATTEST



TOHOPEKALIGA WATER
AUTHORITY



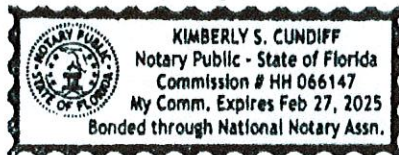
Hector Lizasuain, Chairman

Date: 7/13/22

STATE OF FLORIDA
COUNTY OF OSCEOLA

THE FOREGOING INSTRUMENT was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13th day of July, 2022, by Hector Lizasuain, as Chairman of Toho Board of Supervisors a Florida Special District who ☒ is personally known to me, or ☐ produced as identification.

[AFFIX NOTARY SEAL]



Kimberly S Cundiff
Notary Public Signature
Print Notary Name: Kimberly S Cundiff
My commission expires: 2/27/2025

ATTACHMENT A

INTERLOCAL AGREEMENT

By and among

OSCEOLA COUNTY, FLORIDA,

THE CITY OF KISSIMMEE, FLORIDA

and

TOHOPEKALIGA WATER AUTHORITY

Adopted as of

July 1, 2003

INTERLOCAL AGREEMENT

By and among

OSCEOLA COUNTY, FLORIDA,

THE CITY OF KISSIMMEE, FLORIDA

and

TOHOPEKALIGA WATER AUTHORITY

Adopted as of

July 1, 2003

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INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into as of the 1st day of July 2003, by and among Osceola County, Florida (the "County"), the City of Kissimmee, Florida (the "City of Kissimmee"), and Tohopekaliga Water Authority (the "Authority").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the County, the City of Kissimmee and the Authority hereby agree, stipulate and covenant as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

SECTION 1.01. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

"Acquisition Cost" means the sum of (1) the City of Kissimmee Debt Defeasance Amount and (2) the Transaction Cost.

"Acquisition Debt Obligations" means any series of bonds, notes or other evidence of indebtedness issued or incurred by the Authority to provide funding for the Acquisition Cost.

“Adjusted Annual FWSC Transfer” means the sum to be determined each year, during the Authority’s annual budgetary process for the next Fiscal Year, by initially increasing the Base Annual FWSC Transfer by the annual percentage difference between the Index issued on or before June 1 immediately after the FWSC Transfer Date and the Index issued immediately prior to the next June 1, and for each subsequent Fiscal Year such sum shall be increased based upon and equal to the annual percentage increase in the Index.

“Adjusted Annual Harmony Transfer” means the sum to be determined each year, during the Authority’s annual budgetary process for the next Fiscal Year, by initially increasing the Base Annual Harmony Transfer by the annual percentage difference between the Index issued on or before June 1 immediately after the Harmony Transfer Date and the Index issued immediately prior to the next June 1, and for each subsequent Fiscal Year such sum shall be increased based upon and equal to the annual percentage increase in the Index.

“Adjusted Annual Kissimmee Transfer” means the sum to be determined each year, during the Authority’s annual budgetary process for the next Fiscal Year, by initially increasing the Base Annual Kissimmee Transfer by the annual percentage difference between the Index as most recently issued prior to June 1, 2003 and the Index issued prior to June 1, 2004, and for each subsequent Fiscal Year such sum shall be increased based upon and equal to the annual percentage increase in the Index.

“Adjusted Annual Poinciana Transfer” means the sum to be determined each year, during the Authority’s annual budgetary process for the next Fiscal Year, by

initially increasing the Base Annual Poinciana Transfer by the annual percentage difference between the Index issued on or before June 1 immediately after the Poinciana Transfer Date and the Index issued immediately prior to the next June 1, and for each subsequent Fiscal Year such sum shall be increased based upon and equal to the annual percentage increase in the Index.

“Agreement” means this Interlocal Agreement between Osceola County, the City of Kissimmee and the Authority, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

“Annual Authority Gross Revenues” shall mean for any Fiscal Year all income and moneys received by the Authority from the rates and rentals and other periodic income to be made and collected by the Authority for the use of the products, services and facilities to be provided by the Utility System to be transferred to the Authority hereunder, or otherwise received by the Authority or accruing to the Authority in the ownership, management and operation of such Utility System, calculated in accordance with generally accepted accounting principles applicable to public utility systems similar to the Utility System. Annual Authority Gross Revenues shall not include (1) Government Grants, (2) proceeds of Debt Obligations or other Authority debt, (3) charges, fees and other impositions or exactions from new users for capital improvements necessitated by new growth which are collected separately from the periodic rates imposed by the Authority for the use of the products, sources or facilities provided by the Authority, or other fees and charges for direct reimbursement for connection costs and (4) moneys deposited to any rate stabilization account from any reserve fund. Annual

Authority Gross Revenues shall not include any revenues or moneys derived by the Authority from property or facilities it owns, operates or manages outside of Osceola County.

“Annual Transfer Amount” means the amount (difference) remaining, if any, after first subtracting the Kissimmee System Transfer Amount and then subtracting the County Transfer Amount from the Maximum Annual Transfer.

“Authority” means Tohopekaliga Water Authority, an independent special district, established and created pursuant to Chapter 189, Florida Statutes, by special act, of the Florida Legislature.

“Base Annual FWSC Transfer” means an initial annual amount determined as of the FWSC Transfer Date and composed of the sum of (A) the assessed value of the real and personal property encompassed by the FWSC System as shown on the most recent assessment roll used in conjunction with the taxation of property prior to the FWSC Transfer Date, multiplied by the millage rate upon which the County levied taxes on such assessment roll, and (B) all non-ad valorem assessments imposed by the County upon the real property encompassed by the FWSC System as shown on the most recent assessment roll, or, in the case of governmentally owned property, the equivalent of the amount actually charged by the County in lieu of such non-ad valorem assessments.

“Base Annual Harmony Transfer” means an initial annual amount determined as of the Harmony Transfer Date and composed of the sum of (A) the assessed value of the real and personal property encompassed by the Harmony System as shown on the most recent assessment roll used in conjunction with the taxation of property prior to the

Harmony Transfer Date, multiplied by the millage rate upon which the County levied taxes on such assessment roll, and (B) all non-ad valorem assessments imposed by the County upon the real property encompassed by the Harmony System as shown on the most recent assessment roll, or, in the case of governmentally owned property, the equivalent of the amount actually charged by the County in lieu of such non-ad valorem assessments.

“Base Annual Kissimmee Transfer” means the initial annual amount of \$3,078,000.

“Base Annual Poinciana Transfer” means an initial annual amount determined as of the Poinciana Transfer Date and composed of the sum of (A) the assessed value of the real and personal property encompassed by the Poinciana System as shown on the most recent assessment roll used in conjunction with the taxation of property prior to the Poinciana Transfer Date, multiplied by the millage rate upon which the County levied taxes on such assessment roll, and (B) all non-ad valorem assessments imposed by the County upon the real property encompassed by the Poinciana System as shown on the most recent assessment roll, or, in the case of governmentally owned property, the equivalent of the amount actually charged by the County in lieu of such non-ad valorem assessments.

“City of Kissimmee” means the City of Kissimmee, Florida, a municipal corporation duly organized and validly existing under the laws of the State of Florida.

“City of Kissimmee Debt Defeasance Amount” means the amount required to redeem, defease or otherwise pay in full any Debt Obligations of the City of Kissimmee

issued to finance, or which are secured by the pledge of any revenues from, the Utility System owned by the City of Kissimmee. Such amount shall include the reasonable and necessary costs, fees and expenses incurred by the City of Kissimmee in connection with the redemption, defeasance or payment of any such Debt Obligations, including, but not limited to (1) fees and disbursements of the City of Kissimmee's bond counsel, (2) fees and disbursements of the City of Kissimmee's financial advisor, and (3) any other costs of a similar nature reasonably incurred.

"City of St. Cloud" means the City of St. Cloud, Florida, a municipal corporation duly organized and validly existing under the laws of the State of Florida.

"County" or **"Osceola County"** means Osceola County, Florida, a charter county and political subdivision of the State of Florida.

"County Transfer Amount" means the sum of the Harmony Transfer Amount, the FWSC Transfer Amount and the Poinciana Transfer Amount, which, to the extent such amounts or portions thereof become available as provided in Section 3.05 hereof, shall be transferred by the Authority to the County.

"Debt Obligations" means any series of bonds, notes or other evidence of indebtedness issued or incurred by any party hereto.

"Easements" means all existing rights, privileges, easements, licenses, prescriptive rights, right-of-ways, and rights to use public and private roads, highways, streets, railroads and other areas owned or used by either the County or the City of Kissimmee in connection with the construction, re-construction, installation, expansion,

maintenance and operation of any Utility Assets, any Utility System or the provision of Utility Service.

“Financing Documents” shall mean the resolution or resolutions duly adopted by the Authority, as well as any indenture of trust, loan agreement, trust agreement, interlocal agreement or instrument relating to the issuance or security of any Debt Obligations or other obligations of the Authority.

“Fiscal Year” means the period commencing on October 1 each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the Authority.

“FWSC System” means all or any portion of the potable and non-potable water supply, treatment, storage and distribution systems and wastewater collection, transmission, treatment, disposal, reuse and reclaimed systems located in Osceola County and owned by the Florida Water Services Corporation on January 1, 2003 and to which the County has, or subsequently acquires, an acquisition right.

“FWSC Transfer Amount” means a contingent amount to be transferred annually by the Authority to the County determined and computed as provided in Section 3.05 hereof. In no event shall the FWSC Transfer Amount ever exceed the Maximum Annual FWSC Transfer.

“FWSC Transfer Date” means the date on which the Authority anticipates issuing Debt Obligations and actually closes on the conveyance and transfer of all or a portion of the FWSC System to the Authority.

“Government Grants” when used with respect to the Utility System, shall mean any sum of money heretofore or hereafter received by the Authority from the United States of America or any agency thereof or from the State of Florida or any agency or political Authority, for or with respect to (1) the construction, acquisition or other development of an addition, extension or improvement to any part of the utility system owned, acquired or operated by the Authority, or any costs of any such construction, acquisition or development, or (2) the financing of any such construction, acquisition, development or costs.

“Harmony System” means the potable and non-potable water supply, treatment, storage and distribution systems and wastewater collection, transmission, treatment, disposal, reuse and reclaimed systems owned by the Harmony Community Development District and to which the County has, or subsequently acquires, an acquisition right.

“Harmony Transfer Amount” means a contingent amount to be transferred annually by the Authority to the County determined and computed as provided in Section 3.05 hereof. In no event shall the Harmony Transfer Amount ever exceed the Maximum Annual Harmony Transfer.

“Harmony Transfer Date” means the date on which the Authority anticipates issuing Debt Obligations and actually closes on the conveyance and transfer of the Harmony System to the Authority.

“Index” means the Gross Domestic Product Implicit Price Deflator Index prepared by the United States Department of Commerce, it's successor in function, or, in the event the Gross Domestic Product Implicit Price Deflator Index is discontinued,

another index fairly representative of water and wastewater price level adjustments. Unless agreed to otherwise by all parties hereto, a price increase or decrease index for major categories of operating costs incurred by water or wastewater utilities adopted as required by law by the Florida Public Service Commission shall be deemed fairly representative of water and wastewater price level adjustments.

“Kissimmee System Transfer Amount” means the amount to be transferred annually by the Authority to the City of Kissimmee computed as follows: (1) for each full calendar month following the Transfer Date through September 30, one twelfth (1/12) of the Base Annual Kissimmee Transfer; (2) for the first full Fiscal Year following the Transfer Date, the Base Annual Kissimmee Transfer; and (3) for the second full Fiscal Year following the Transfer Date and the following twenty-three (23) Fiscal Years thereafter, the Adjusted Annual Kissimmee Transfer.

“Maximum Annual Transfer” means twelve percent (12%) of the Annual Authority Gross Revenues or the Kissimmee System Transfer Amount, whichever is greater.

“Maximum Annual FWSC Transfer” means an annual amount not to exceed the greater of either the Base Annual FWSC Transfer or the Adjusted Annual FWSC Transfer.

“Maximum Annual Harmony Transfer” means an annual amount not to exceed the greater of either the Base Annual Harmony Transfer or the Adjusted Annual Harmony Transfer.

“Maximum Annual Poinciana Transfer” means an annual amount not to exceed the greater of either the Base Annual Poinciana Transfer or the Adjusted Annual Poinciana Transfer.

“Poinciana System” means the potable and non-potable water supply, treatment, storage and distribution systems and wastewater collection, transmission, treatment, disposal, reuse and reclaimed systems owned by the Florida Governmental Utility Authority and to which the County has, or subsequently acquires, an acquisition right.

“Poinciana Transfer Amount” means a contingent amount to be transferred annually by the Authority to the County determined and computed as provided in Section 3.05 hereof. In no event shall the Poinciana Transfer Amount ever exceed the Maximum Annual Poinciana Transfer.

“Poinciana Transfer Date” means the date on which the Authority anticipates issuing Debt Obligations and actually closes on the conveyance and transfer of the Poinciana System to the Authority.

“Transaction Cost” means for any series of Acquisition Debt Obligations, the reasonable and necessary costs, fees and expenses incurred by the Authority in connection with the issuance and sale of the Acquisition Debt Obligations, including but not limited to (1) underwriters’ discounts; (2) original issue discount; (3) rating agency and other financing fees; (4) the fees and disbursements of the Authority’s consulting engineers; (5) the fees and disbursements of the Authority’s bond counsel, water and wastewater utility counsel and consultants; (6) the fees and disbursements of the Authority’s financial advisor; (7) the amounts paid or payable to the County and the City

of Kissimmee pursuant to Section 6.03 hereof; (8) the costs of preparing or printing the Acquisition Debt Obligations and the documentation supporting the issuance of such Debt Obligations; (9) the fees payable in respect of any municipal bond insurance policy or other credit enhancements; and (10) any other costs of a similar nature reasonably incurred.

“Transfer Date” means the date on which the Acquisition Debt Obligations are anticipated to be issued and closing on the conveyance and transfer of the Utility System and Utility Assets occurs as provided in Section 5.03 hereof.

“Transition Cost” means the reasonable and necessary costs, fees and expenses incurred by the City of Kissimmee in connection with the development, preparation and implementation of a plan to transition operation and administration of the Utility System and Utility Service to the Authority as provided in Section 4.01 hereof.

“Utility Assets” means those assets, business properties, and rights both tangible and intangible, that either of the County or the City of Kissimmee owns or uses in conjunction with the operation of any Utility System, or which during the term of this Agreement may become available to any of them, or any ownership interest which any of them has or hereafter acquires during the term of this Agreement, relating thereto, including the following:

(1) All real property and interests, whether recorded in the public records or not, in real property owned, used or controlled in conjunction with the operation of any Utility System by the County or the City of Kissimmee.

(2) All water and wastewater, including non-potable, reuse and reclaimed water, treatment plants, wells, collection, transmission, distribution, pumping, effluent and disposal facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, tanks, distribution, collection or transmission pipes or facilities, valves, meters, service connections, and all other physical facilities and property installations used in the operation of any Utility System, together with an assignment of all existing and assignable third party warranties that relate to completed or in progress construction.

(3) All equipment, vehicles, tools, parts, laboratory equipment, and other personal property owned or used by either of the County or the City of Kissimmee in connection with the operation of any Utility System.

(4) All Easements in favor of the County or the City of Kissimmee or their predecessors in interest to any Utility System.

(5) All current customer records and supplier lists, as-built surveys and water and wastewater plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer models and studies, accounting, budget and business records and all other information controlled by or in the possession of the County or the City of Kissimmee that relates to the description and operation of any Utility System, inclusive of all pertinent computer records and the lawful use of all computer software which is or was used in the operation of any Utility System for billing or customer record keeping

purposes, including but not limited to the lawful use of any licensed software or proprietary software developed for the County or the City of Kissimmee.

(6) All necessary regulatory authority or approvals subject to all conditions, limitations or restrictions contained therein; all existing permits and other governmental authorizations and approvals of any kind necessary to operate or provide Utility Service or construct, operate, expand, and maintain any Utility System according to all governmental requirements.

(7) All rights and obligations of the County and the City of Kissimmee as of the Transfer Date relating to the Utility Assets or any Utility System under any existing or proposed agreements and contracts which specifically relate to any Utility System; and, after the Transfer Date, any such rights and obligations specifically relating to any Utility Assets, Utility System or Utility Service (including without limitation any right to acquire Harmony System, the FWSC System or the Poinciana System) which the Authority, in its sole discretion, determines to assume or acquire from either of the County or the City of Kissimmee.

(8) All moneys, funds, accounts and intangibles, or an amount equivalent thereto as of the Transfer Date, held under or pursuant to any Debt Obligations, indenture of trust, resolution, ordinance, or other instrument by the County and the City of Kissimmee, or any third party for the benefit of any ratepayers of the Utility System, or in connection with the financing or operation of the Utility System, the Utility Assets or providing Utility Services.

“Utility Service” means the duty, obligation, power and authority to acquire, obtain, construct, provide, collect, distribute, dispose of, regulate, finance and charge for the supply of potable and non-potable water, treatment, storage or distribution systems, facilities and associated services and wastewater collection, transmission, treatment disposal and reuse or non-potable water systems, facilities and associated services.

“Utility System” means the potable and non-potable water supply, treatment, storage, and distribution systems and wastewater collection, transmission, treatment, disposal and reuse systems owned by either the City of Kissimmee or the County, including any Utility Assets which may be owned or controlled by the County or the City of Kissimmee. After the Transfer Date, the term shall be construed, when the context reasonably requires, to include any other potable and non-potable water supply, treatment, storage, or distribution systems or facilities, or wastewater collection, transmission, treatment, disposal and reuse or non-potable systems or facilities acquired by the Authority.

SECTION 1.02. CONSTRUCTION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, shall refer to this Agreement; the term “heretofore” shall mean before the date this Agreement is executed; and the term “hereafter” shall mean after the date this Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other parties to this Agreement. All parties have participated in the drafting and preparation of this Agreement or are a successor to the authors and a beneficiary hereof, and the provisions hereof shall not be construed for or against any party by reason of authorship.

(C) Nothing herein is intended to, or shall be construed to, limit the power of local self-government of a charter county, or conflict with the Constitution of the State of Florida, or the Osceola County Home Rule Charter approved by vote of the electors on March 3, 1992 and which became effective October 1, 1992.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

SECTION 1.04. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The County, the City of Kissimmee and the Authority have the power to enter into agreements with each other and to join with each other in the exercise of common powers. The parties hereto independently and collectively have determined that entering into this Agreement serves the public interest and economic advantage of all of the parties hereto.

(B) The City of Kissimmee presently owns and operates extensive water and wastewater treatment, reuse, distribution and collection systems and treatment facilities within both incorporated and unincorporated areas of Osceola County, Florida.

(C) Although the City of Kissimmee provides water and wastewater facilities and services in the incorporated areas of the City of Kissimmee, a substantial portion of the unincorporated areas of Osceola County are not served by central water and wastewater facilities normally and generally provided and maintained by governmental agencies, and, instead, are served by an uncoordinated mix of private wells, septic tanks, small individually owned on-site disposal systems or package sewage treatment plants, or investor-owned facilities.

(D) To provide for the public interest and welfare, the County and the City of Kissimmee are required to address and balance (1) the impacts of remarkable growth in Osceola County over the last several decades; (2) the need to provide and plan for adequate and timely delivery of potable and non-potable water needs and to plan for quality wastewater collection, treatment, disposal and re-use and non-potable water facilities which are necessary to accommodate existing development and anticipated future growth in a manner concurrent with the demand for such facilities; (3) the requirements of state and federal mandates; and (4) the demands of new development and each local government's statutory responsibility to implement financially feasible comprehensive plans.

(E) The provision of water and wastewater services and facilities in an uncoordinated fashion and the provision of wastewater services and facilities through

septic tanks, small privately-owned on-site disposal systems or package sewage treatment plants constitute impediments to the implementation of financially feasible local comprehensive plans. A regional, publicly-owned utility system responsive to the public demand for better utility service and for consistent protection of the environment can provide a high level of treatment and operation beneficial to the public now and in the future.

(F) The County and the City of Kissimmee desire to cooperatively advance the development of a more uniform and regional approach to the delivery of potable and non-potable water and wastewater services and facilities throughout portions of Osceola County and have requested and urged the Legislature to create the Authority as a special purpose local government to effect and serve such a purpose.

(G) It is the intent and desire of the County, the City of Kissimmee and the Authority to utilize the existing resources and staff of the County and the City of Kissimmee, to avoid duplication of effort, and focus the efforts of the County, the City of Kissimmee and the Authority to develop an efficient and cooperative regional approach to providing water and wastewater services and facilities.

(H) A regional approach to the delivery of potable and non-potable water and wastewater services and facilities within Osceola County will provide the opportunity for the County and the City of Kissimmee to (1) develop an efficient and environmentally sensitive approach to the comprehensive supply, distribution and treatment of water and the collection, treatment and disposal of wastewater; (2) seek economies of scale resulting from the unified and coordinated provision of regional utility services by local

government; (3) ensure that current and future users of water and wastewater facilities and services within Osceola County are provided with cost efficient services at reasonable rates by local government; (4) ensure that the operation and maintenance of potable and non-potable water and wastewater facilities is done in a pro-active, accountable and environmentally responsible manner; (5) stabilize potable and non-potable water and wastewater utility rates over the long term, reduce inefficient expansion and extension of service capabilities and avoid the proliferation of smaller and inefficient treatment facilities and sites; (6) assure the appropriate expansion and interconnection of existing facilities and the construction of future facilities in a coordinated, uniform and non-discriminatory manner which avoids special or disproportionate benefit to individual utility operations or special interests at the expense of either current or future users; (7) promote the protection and environmentally sensitive utilization of water supplies, surface water and ground water resources in Osceola County and surrounding areas; and (8) accomplish a greater public use and increased public benefit which result from the ownership, operation and control of water and wastewater systems and facilities by local government.

ARTICLE II
REPRESENTATIONS

SECTION 2.01. REPRESENTATIONS OF OSCEOLA COUNTY.

Osceola County makes the following representations as the basis for the undertaking on the part of the City of Kissimmee and the Authority herein contained:

(A) The County is duly organized and validly existing as a political subdivision of the State of Florida.

(B) The County has full power and authority to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder.

(C) The County is not in default under any provisions of the laws of the State which are material to the performance of its obligations under this Agreement.

(D) The County has duly authorized the execution and delivery of this Agreement and assuming the due authorization, execution and delivery by the City of Kissimmee and the Authority, this Agreement constitutes a valid and legally binding obligation of the County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(E) The authorization, execution and delivery of this Agreement and the compliance by the County with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation,

decree, order or any provision of the Constitution or laws of the State relating to the County or its affairs, or any ordinance, resolution, agreement, lease or other instrument to which the County is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the County, threatened against or affecting the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated, or which, in any way, would materially adversely affect the validity of this Agreement or any agreement or instrument to which the County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

SECTION 2.02. REPRESENTATIONS OF THE CITY OF KISSIMMEE.

The City of Kissimmee makes the following representations as the basis for the undertaking on the part of the County and the Authority herein contained:

(A) The City of Kissimmee is duly organized and validly existing as a municipal corporation of the State.

(B) The City of Kissimmee has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(C) The City of Kissimmee is not in default under any provisions of the laws of the State which are material to the performance of its obligations under this Agreement.

(D) The City of Kissimmee has duly authorized the execution and delivery of this Agreement and assuming the due authorization, execution and delivery by the County and the Authority, this Agreement constitutes a valid and legally binding

obligation of the City of Kissimmee, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(E) The authorization, execution and delivery of this Agreement and the compliance by the City of Kissimmee with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the City of Kissimmee or its affairs, or any ordinance, resolution, agreement, lease or other instrument to which the City of Kissimmee is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the City of Kissimmee, threatened against or affecting the City of Kissimmee, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Agreement or any agreement or instrument to which the City of Kissimmee is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

SECTION 2.03. REPRESENTATIONS OF THE AUTHORITY. The Authority makes the following representations as the basis for the undertaking on the part of the County and the City of Kissimmee herein contained:

(A) The Authority is duly organized and validly existing as an independent special district.

(B) The Authority has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(C) The Authority is not in default under any provisions of the laws of the State which are material to the performance of its obligations under this Agreement.

(D) The Authority has duly authorized the execution and delivery of this Agreement and assuming the due authorization, execution and delivery by the County and the City of Kissimmee this Agreement constitutes a valid and legally binding obligation of the Authority, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(E) The authorization, execution and delivery of this Agreement and the compliance by the Authority with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the Authority or its affairs, or any ordinance, resolution, agreement, lease or other instrument to which the Authority is subject or by which it is bound.

(F) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the Authority, threatened against or affecting the Authority, wherein an unfavorable decision,

ruling or finding would materially adversely affect the transactions contemplated hereby or issuance of the Acquisition Debt Obligations, or which, in any way, would materially adversely affect the validity of the Acquisition Debt Obligations, this Agreement or any agreement or instrument to which the Authority is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

ARTICLE III

TRANSITION TO REGIONAL UTILITY AUTHORITY

SECTION 3.01. TRANSFER.

(A) Subject to the terms and provisions of this Agreement and for the consideration herein provided, the County and the City of Kissimmee agree to and hereby grant, bargain, sell, convey, assign, transfer and vest unto the Authority the Utility Assets and, to the maximum extent permitted by law, the duty, obligation, authority, power and jurisdiction to operate and provide Utility Service within the incorporated and unincorporated areas of Osceola County, Florida. On the Transfer Date and thereafter for the term of this Agreement, the City of Kissimmee and the County hereby respectively obligate themselves and covenant not to compete with the Authority to provide, undertake, or exercise any right to provide Utility Services.

(B) On the Transfer Date, the County and the City of Kissimmee shall respectively transfer to the Authority and the Authority shall accept the Utility Assets and be duly empowered to operate and provide Utility Service within and throughout the incorporated and unincorporated areas of Osceola County, Florida as provided herein.

(C) Provided, however, this Agreement shall not be construed to transfer any permitting or regulatory responsibility or duty to the Authority in conjunction with any municipal service benefit unit or dependent special district in existence on the effective date hereof.

SECTION 3.02. COVENANTS AND CONDITIONS PRECEDENT TO TRANSFER.

(A) At or prior to execution hereof, the County, the City of Kissimmee and the Authority shall act to consider the public interest provisions of Section 125.3401, 180.301 and 189.423, Florida Statutes.

(B) As soon as reasonably practicable after the execution hereof, the Authority, together with the County and the City of Kissimmee shall institute a joint proceeding pursuant to Chapter 75, Florida Statutes, for validation of the Acquisition Debt Obligations and the obligations provided for in this Agreement. In the event of any disagreement between the Authority and any other party hereto concerning the strategy or prosecution of the validation proceeding, the judgment of the Authority shall prevail. The Authority shall not issue any Acquisition Debt Obligations prior to validation of the Acquisition Debt Obligations and the obligations provided for in this Agreement by the applicable Circuit Court and either (1) the appeal period has expired without an appeal having been taken, or (2) any appeal has been resolved in favor of the Authority, the County and the City of Kissimmee.

SECTION 3.03. CONSIDERATION FOR TRANSFER.

(A) As consideration for the transfer of the Utility Assets from the County and the City of Kissimmee, the authorization to operate and provide Utility Service as provided herein, and each general purpose local governments' respective covenants and obligations hereunder, the Authority shall, subject to the provisions hereof, (1) issue its

Acquisition Debt Obligations in an amount sufficient to fund the Acquisition Cost on the Transfer Date, (2) for the initial term of this Agreement, and only for such initial term, pay and deliver the Kissimmee System Transfer Amount to the City of Kissimmee, (3) for the initial term of this Agreement and only for such initial term, pay and deliver the County Transfer Amount as provided for herein, and (4) for the term of this Agreement, and any renewals or extensions hereof, pay and deliver to the County and the City of Kissimmee, respectively, the Annual Transfer Amount . Additionally, the parties hereto expressly acknowledge and agree that, as consideration for the transfer of the Utility Assets from the City of Kissimmee and as an inducement for the City of Kissimmee's execution hereof, the Authority shall continue the imposition of any surcharge authorized by Section 180.191, Florida Statutes, prior to the Transition Date, incrementally reducing and ultimately eliminating such surcharge within fifteen (15) years of the Transition Date.

(B) Any Annual Transfer Amount, the Kissimmee System Transfer Amount, or the County Transfer Amount, distributed to the County or the City of Kissimmee hereunder shall be transferred on a junior, inferior and subordinate basis to all payments or deposits required by any Debt Obligations of the Authority.

(C) As an inducement to the City of Kissimmee and the County to enter into this Agreement and as consideration throughout the term of this Agreement, the Authority shall adopt and implement a resolution which adds two liaison members to the Board of Supervisors; one to be a sitting City of Kissimmee City Commissioner appointed by the

City Commission, and one to be a sitting member of the Osceola County Board of County Commissioners appointed by the County Commission. Such liaison members shall serve as ex-officio non-voting members of the Board of Supervisors of the Authority without additional compensation, but in all other respects participate fully as members of the Board of Supervisors.

SECTION 3.04. RECOGNITION OF DISPROPORTIONATE CONTRIBUTIONS.

(A) Unlike the County, the City of Kissimmee, at the time of initial execution of this Agreement, owns and operates extensive water and wastewater treatment, distribution and collection systems and treatment facilities within both incorporated and unincorporated areas of Osceola County. The parties hereto expressly acknowledge and affirm that, as a part of and in addition to any allocation of the Annual Transfer Amount, the City of Kissimmee is entitled to the Kissimmee System Transfer Amount, as consideration for its disproportionate and substantial contribution and transfer of their water and wastewater utility systems to the Authority hereunder. The parties acknowledge, understand and affirm that the obligation to pay, and the right to receive, the Kissimmee System Transfer Amount shall cease and terminate at the end of the initial twenty-five (25) year term of this Agreement.

(B) Unlike the City of Kissimmee, the County, at the time of initial execution of this Agreement, does not own or operate any significant water or wastewater systems or facilities. However, the parties recognize that the County does have significant and

positive rights or opportunities to acquire, or greatly assist the Authority in acquiring the Harmony System, the FWSC System and the Poinciana System. The parties hereto expressly acknowledge and confirm that, in the event the Authority acquires the Harmony System, the FWSC System or the Poinciana System during the initial term of this Agreement, the County shall be entitled to the County Transfer Amount as consideration for its assistance and assignment of its rights and opportunities to acquire any or all of the Harmony System, the FWSC System or the Poinciana System, subject to the following provisions and conditions.

(1) The parties acknowledge, understand and affirm that the obligation to pay, and the right to receive, the County Transfer Amount:

(a) is absolutely contingent upon the Authority respectively acquiring the Harmony System, the FWSC System and or the Poinciana System during the initial twenty-five (25) year term of this Agreement;

(b) except as respectively provided in Section 3.05(C), (E) and (G) hereof, shall be payable in any Fiscal Year only to the extent that revenues are available to pay the County Transfer Amount solely from revenue derived respectively from the Harmony System, the FWSC System and or Poinciana System; and

(c) shall cease and terminate at the end of the initial twenty-five (25) year term of this Agreement.

(2) The County Transfer Amount shall be transferred by the Authority to the County beginning with the first full Fiscal Year following the first to occur of the

Harmony Transfer Date, the FWSC Transfer Date or the Poinciana Transfer Date and for each full Fiscal Year thereafter for the remaining initial twenty-five (25) year term of this Agreement.

SECTION 3.05. DETERMINING THE COUNTY TRANSFER AMOUNT.

(A) In any Fiscal Year the County Transfer Amount shall be the sum of the available Harmony Transfer Amount, the FWSC Transfer Amount and the Poinciana Transfer Amount.

(B) Prior to the Harmony Transfer Date and for each Fiscal Year thereafter for the remaining initial twenty-five (25) year term of this Agreement, the Authority shall determine, or cause its rate consultant to determine, the Harmony Transfer Amount based upon and using the following criteria and provisions.

(1) The Harmony Transfer Amount shall not exceed the Maximum Annual Harmony Transfer Amount and shall only be available each Fiscal Year to the extent that:

(a) revenues are available from the Harmony System after the Authority has budgeted to pay debt service and all required reserves for all Debt Obligations, and otherwise complied with any Financing Documents or any obligations of the Authority hereunder;

(b) revenues are reasonably anticipated to be available from the Harmony System after the Authority has budgeted to maintain the Harmony System and

all portions thereof in good condition so that the Authority can operate or cause to be operated the same in an efficient and economical manner, making or causing to be made such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation thereof; and

(c) it is reasonably determined by the Authority, or its rate consultant, that the payment of the Harmony Transfer Amount alone would not initially cause or require an increase in rates, fees and charges for the Harmony System approved by the Florida Public Service Commission or any governmental seller thereof as of the Harmony Transfer Date, or thereafter alone cause or require an increase in rates, fees and charges for the Harmony System for any subsequent Fiscal Year to the next in excess of the greater of two percent (2%) or any increase resulting from the application of a periodic automatic indexing factor applicable to the initial or any revised schedule of rates, fees and charges for the Harmony System.

(C) At any time prior to an ensuing Fiscal Year, the Authority may opt to consolidate the Harmony System with all or any portion of the Utility System and no longer account separately and determine and compute the Harmony Transfer Amount as provided herein; provided, however, that the Authority first adopts a resolution irrevocably opting to pay the County the Harmony Transfer Amount in an amount equal to the Maximum Annual Harmony Transfer for each succeeding full Fiscal Year thereafter remaining during the initial twenty-five (25) year term of this Agreement.

(D) Prior to the Poinciana Transfer Date and for each Fiscal Year thereafter for the remaining initial twenty-five (25) year term of this Agreement, the Authority shall determine, or cause its rate consultant to determine, the Poinciana Transfer Amount based upon and using the following criteria and provisions.

(1) The Poinciana Transfer Amount shall not exceed the Maximum Poinciana Transfer and shall only be available each Fiscal Year to the extent that:

(a) revenues are available from the Poinciana System after the Authority has budgeted to pay debt service and all required reserves for all Debt Obligations, and otherwise complied with any Financing Documents or any obligations of the Authority hereunder;

(b) revenues are reasonably anticipated to be available from the Poinciana System after the Authority has budgeted to maintain the Poinciana System and all portions thereof in good condition so that the Authority can operate or cause to be operated the same in an efficient and economical manner, making or causing to be made such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation thereof; and

(c) it is reasonably determined by the Authority, or its rate consultant, that the payment of the Poinciana Transfer Amount alone would not initially cause or require an increase in rates, fees and charges for the Poinciana System approved by the Florida Public Service Commission or any governmental seller thereof as of the Poinciana Transfer Date, or thereafter alone cause or require an increase in rates, fees and

charges for the Poinciana System for any subsequent Fiscal Year to the next in excess of the greater of two percent (2%) or any increase resulting from the application of a periodic automatic indexing factor applicable to the initial or any revised schedule of rates, fees and charges for the Poinciana System.

(E) At any time prior to an ensuing Fiscal Year, the Authority may opt to consolidate the Poinciana System with all or any portion of the Utility System and no longer account separately and determine and compute the Poinciana Transfer Amount as provided herein; provided, however, that the Authority first adopts a resolution irrevocably opting to pay the County the Poinciana Transfer Amount in an amount equal to the Maximum Annual Poinciana Transfer for each succeeding full Fiscal Year thereafter remaining during the initial twenty-five (25) year term of this Agreement.

(F) Prior to the FWSC Transfer Date and for each Fiscal Year thereafter for the remaining initial twenty-five (25) year term of this Agreement, the Authority shall determine, or cause its rate consultant to determine, the FWSC Transfer Amount based upon and using the following criteria and provisions.

(1) The FWSC Transfer Amount shall not exceed the Maximum FWSC Transfer and shall only be available each Fiscal Year to the extent that:

(a) revenues are available from the FWSC System after the Authority has budgeted to pay debt service and all required reserves for all Debt Obligations, and otherwise complied with any Financing Documents or any obligations of the Authority hereunder;

(b) revenues are reasonably anticipated to be available from the FWSC System after the Authority has budgeted to maintain the FWSC System and all portions thereof in good condition so that the Authority can operate or cause to be operated the same in an efficient and economical manner, making or causing to be made such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation thereof; and

(c) it is reasonably determined by the Authority, or its rate consultant, that the payment of the FWSC Transfer Amount alone would not initially cause or require an increase in rates, fees and charges for the FWSC System approved by the Florida Public Service Commission or any governmental seller thereof as of the FWSC Transfer Date, or thereafter alone cause or require an increase in rates, fees and charges for the FWSC System for any subsequent Fiscal Year to the next in excess of the greater of two percent (2%) or any increase resulting from the application of a periodic automatic indexing factor applicable to the initial or any revised schedule of rates, fees and charges for the FWSC System.

(G) At any time prior to an ensuing Fiscal Year, the Authority may opt to consolidate the FWSC System with all or any portion of the Utility System and no longer account separately and determine and compute the FWSC Transfer Amount as provided herein; provided, however, that the Authority first adopts a resolution irrevocably opting to pay the County the FWSC Transfer Amount in an amount equal to

the Maximum Annual FWSC Transfer for each succeeding full Fiscal Year thereafter remaining during the initial twenty-five (25) year term of this Agreement.

SECTION 3.06. ALLOCATION AND DISTRIBUTION OF ANNUAL TRANSFER AMOUNT. The Annual Transfer Amount shall be distributed by the Authority equally to the County and the City of Kissimmee; provided, however, that at the end of the initial twenty-five (25) year term of this Agreement, the City of Kissimmee shall be guaranteed that its respective allocation and distribution of the Annual Transfer Amount thereafter would not in any event be less than the Kissimmee System Transfer Amount last distributed to the City of Kissimmee during the twenty-fifth (25th) full Fiscal Year of this Agreement.

SECTION 3.07. RATE COVENANT.

(A) The Authority shall fix, establish and maintain such rates, fees, and charges, and collect such rates, fees and other charges for the product, services and facilities of the Utility System, or any other utility system hereafter acquired by the Authority, and revise the same from time to time, whenever necessary, so that such rates, fees and charges will always provide revenues adequate at all times to pay in each Fiscal Year debt service or other obligations associated with any Debt Obligations or Financing Documents, including all reasonable operational, renewal, repair, replacement and maintenance costs, and its obligations to fund and distribute the Kissimmee System Transfer Amount and the Annual Transfer Amount respectively to the County and the City of Kissimmee as provided herein. Such rates, fees or other charges shall not be so

reduced so as to be insufficient to provide, subject to the terms and conditions hereof, full and timely payment of the foregoing obligations in any Fiscal Year.

(B) If, in any Fiscal Year, the Authority shall fail to comply with the requirements contained in this section, it shall immediately retain and cause a rate consultant to review its rates, fees, charges, income, gross revenues, operating expenses and methods of operation and to make written recommendations as to the methods by which the Authority may promptly seek to comply with the requirements set forth in this section. The Authority shall forthwith commence to implement such recommendations to the extent required so as to cause it thereafter to comply with the foregoing rate covenant.

SECTION 3.08. DISTRIBUTION OF TRANSFER AMOUNTS.

(A) As provided for herein, the Authority shall distribute the Kissimmee System Transfer Amount, the County Transfer Amount and the Annual Transfer Amount, on a monthly basis respectively to the County and the City of Kissimmee, for each immediately preceding calendar month, using pro rata monthly estimates and adjusting subsequent distributions to reflect actual revenues received during the prior Fiscal Year on or before April 1 following the end of each Fiscal Year. Provided, however, the obligation to pay and the distribution of the Harmony Transfer Amount, the FWSC Transfer Amount and the Poinciana Transfer Amount, which comprise the County Transfer Amount, shall respectively commence with the first full Fiscal Year following the Harmony Transfer Date, the FWSC Transfer Date and the Poinciana Transfer Date. Unless agreed otherwise by the receiving general purpose local government, the

estimated monthly distribution of transfer amounts described herein shall be delivered by the Authority within forty-five (45) days of the end of each calendar month.

(B) By resolution any general purpose local government entitled to receive the Kissimmee System Transfer Amount, the County Transfer Amount and the Annual Transfer Amount, may agree to waive all or any portion of such transfers due and owing to such general purpose local government. Such resolution shall without qualification describe with specificity the portion or amount of any transfer waived, the period during which the transfer will be waived, and irrevocably release the Authority from any claim for the portion or amount of any transfer so waived. The Authority shall be entitled to rely upon a certified copy of any such resolution.

SECTION 3.09. CONSOLIDATION AND EQUALIZATION OF RATES.

(A) Unless otherwise provided by law, upon the acquisition of any utility system by the Authority, no public hearing shall be required for adoption by the Authority by resolution of the rates, fees and charges contained in the rate tariff relating thereto previously approved by the Florida Public Service Commission, or any governmental seller thereof.

(B) The parties recognize and acknowledge that as of the Transfer Date, the Utility System will be comprised of two or more physically separate subsystems or sub-districts with differing rates, fees and charges. The parties recognize and acknowledge that the Authority shall be obligated to set rates, fees and charges for its services and products in a manner reasonably related to its costs, its obligations hereunder and any requirements of the Financing Documents. The Authority shall not consolidate rates, fees

and charges for subsystems or sub-districts that are not physically and substantially interconnected or do not share treatment or production facilities, unless and until the monthly rates, fees and charges for the prior Fiscal Year for each system or sub-district to be consolidated have been set by the Authority to be within ten percent (10%) of each other.

(C) Whenever reasonably practicable, the Authority shall endeavor to consolidate and interconnect subsystems and sub-districts and consolidate, equalize and make uniform its rates, fees and charges.

SECTION 3.10. PROVISION FOR INCLUSION OF CITY OF ST. CLOUD. The City of St. Cloud initially participated in the development of this Agreement and was offered the opportunity to enter into and participate in this Agreement and the establishment of the Authority, but respectfully declined. Accordingly, the Authority shall not provide any service or facilities within the current zone or service area authorized by Section 180.02(3), Florida Statutes, and described in the City of St. Cloud Ordinance No. 2002-31 without first obtaining the written consent of the City of St. Cloud City Council by resolution. In the event the City of St. Cloud determines to provide such consent this Agreement may be modified to include the City of St. Cloud or the Authority may enter into a separate interlocal agreement with the City of St. Cloud similar to this Agreement on such terms and conditions as are mutually agreeable to the respective parties thereto. Provided, however, that the City of St. Cloud

shall not be offered any terms or conditions which are generally or substantially more favorable than those provided for herein.

ARTICLE IV
TRANSITION PLAN

SECTION 4.01. DEVELOPMENT OF TRANSITION PLAN.

(A) The parties acknowledge and recognize that the City of Kissimmee is particularly well positioned and has the capacity to most efficiently and effectively develop and prepare a transition plan to effect the administrative and operational aspects of the transfer contemplated in Section 3.01 hereof. Within ninety (90) days of entering into this Agreement, the City agrees to and shall use its abilities and resources to develop, prepare and deliver a transition plan relating to the administrative and operational aspects of the transfer contemplated in Section 3.01 hereof.

(B) Subject to the approval of the City of Kissimmee, the City Manager of the City of Kissimmee, or his designee, shall be authorized to act as the Executive Director of the Authority through the Transfer Date. Provided, however, the Authority may at any time prior to the Transfer Date, engage or designate another person as its Executive Director.

(C) It is the express intention of the parties to use the existing capabilities, resources and personnel of the County and the City of Kissimmee to transition the Utility Assets, Utility System and Utility Service to the Authority and any transition plan developed and prepared by the City of Kissimmee shall be reasonably reflective of such policy direction.

SECTION 4.02. COSTS AND FEES ASSOCIATED WITH DEVELOPING TRANSITION PLAN. The Authority shall pay, or respectively reimburse the City of Kissimmee if already paid, from proceeds of the Acquisition Debt Obligations: (1) the actual and verifiable costs advanced or expended by the City of Kissimmee to develop, prepare and implement any transition plan required herein through the Transfer Date, and (2) any actual and verifiable costs advanced or expended by the City of Kissimmee for a period up to two (2) years after the Transfer Date to assist the Authority in the administration and operation of the Utility System or in otherwise providing Utility Service. Accordingly, in providing such assistance, the City acknowledges and agrees to provide all necessary services, supplies, maintenance, office space, and other assistance at its cost without mark-up or the application of any multiplier to such cost. From and after the Transfer Date, the Authority shall reimburse and pay the City of Kissimmee periodically, but not more often than monthly, upon presentation of appropriate invoices and back-up material provided in accordance with generally accepted accounting practices.

SECTION 4.03. EMPLOYMENT PREFERENCE.

(A) To the extent that the Authority may lawfully do so and to the extent that the Authority has any position available, the Authority shall grant a preference in hiring to any employee of the County and the City of Kissimmee currently employed in the operation of the Utility System, the Utility Assets or the provision of Utility Service. However, any such applicants must meet reasonable and non-discriminatory employment

qualifications and pre-employment screening criteria. All employment shall be subject to reasonable rules and regulations established by the Authority on an at will basis.

(B) The retention and continued employment of all employees currently employed in the operation of the Utility System, the Utility Assets and the provision of Utility Services is a valuable asset and necessary for a smooth and efficient transfer. As a part of the transition process contemplated herein, the County and the City of Kissimmee covenant and agree to transition and make available to the Authority all employees currently employed in the operation of the Utility System, the Utility Assets and the provision of Utility Service. It is the express intention and direction of the parties hereto that a uniform and inclusionary pre-transition approach be developed which keeps all affected employees informed of the personnel, staffing, and employment preference aspects of the transition process.

ARTICLE V

CONVEYANCE OF THE UTILITY ASSETS

SECTION 5.01. DEVELOPING INVENTORY.

(A) As soon as reasonably practicable after execution hereof, the County and the City of Kissimmee shall timely cooperate with the Authority in more fully identifying the Utility Assets.

(B) Within sixty (60) days of entering into this Agreement, the County and the City of Kissimmee have the ability and the resources, and so covenant, to prepare, complete and deliver to the Authority the following schedules without undue qualification:

(1) A schedule providing a complete legal description or recording references of all real property owned and used in the operation of the Utility System, the Utility Assets or in providing Utility Service.

(2) A schedule identifying all unplatted Easements known and available to either the County or the City of Kissimmee which are used or available for use in connection with the Utility System, the Utility Assets or in providing Utility Service. Such schedule will include legal descriptions or recording references which will allow for subsequent location and title searches.

(3) A schedule of all plans and specifications in possession of the County and the City of Kissimmee which substantially describe the Utility System's

water and wastewater plants, lift or pump stations, wastewater collection system, and major transmission and reuse and non-potable water facilities.

(4) A schedule of all existing third party warranties that relate to completed or in progress construction.

(5) A schedule of all current or active permits, applications or other documents, together with effective dates and any expiration dates which authorize the operation of the Utility System's water and wastewater treatment facilities by all applicable governmental authorities.

(6) A schedule of any available Utility System maps.

(7) An inventory of the equipment, vehicles, tools, parts, laboratory equipment, computer equipment, and other personal property used by the County and the City of Kissimmee in connection with the operation of the Utility System, the Utility Assets or in providing Utility Service.

(8) A schedule of all operating and vendor contracts affecting the Utility System, the Utility Assets or the provision of Utility Service.

(9) A schedule of all executory reuse or effluent disposal agreements entered into by either the County or the City of Kissimmee, or their predecessors, for the sale or reuse of effluent delivered through the Utility System, Utility Assets or provided in conjunction with the Utility Service.

(10) A schedule of all existing executory agreements including any developer agreements entered into by either the County or the City of Kissimmee, or their

predecessors and owners or developers of real property for the provision of water or wastewater disposal services through the Utility System, Utility Assets or in conjunction with providing Utility Service.

(11) A schedule, with respect to all executory agreements under which either the County or the City of Kissimmee as the owner of the Utility System, the Utility Assets or in providing Utility Service has any continuing or outstanding water or wastewater service obligations (as of a common date as close to the Transfer Date as reasonably possible and which shall be updated as of the Transfer Date), which shows the total number of (a) contractual connections; (b) contractual connections paid for and not yet connected; (c) contractual connections not yet paid for and not yet connected; and (d) any contractual connections for which any party hereto has or expects to begin collecting a periodic minimum or base charge prior to the Transfer Date.

(12) A schedule of all other agreements entered into between the County or the City of Kissimmee, their predecessors, or third parties which would be reasonably considered to materially affect or be an encumbrance upon the Utility System, the Utility Assets or otherwise materially affect the provision of Utility Service, including without limitation, any leasehold agreements or oral agreements, if any. If any oral agreements exist, they shall be so identified together with a narrative of the terms thereof.

(13) A schedule of all current tariffs which represent the most current schedule of rates, fees and charges being imposed in conjunction with the Utility System, the Utility Assets or the provision of Utility Service.

(14) A schedule, description and estimate of all moneys, funds, accounts, or any other intangibles held under or pursuant to any Debt Obligations, indenture of trust, resolution, ordinance or other instrument by the County and the City of Kissimmee, or any other third party, for the benefit of any ratepayers of the Utility System, or in connection with the financing or operation of the Utility System, the Utility Assets or providing Utility Service.

(B) From and after the date of execution of this Agreement, neither the County nor the City of Kissimmee shall without the prior written consent of the Authority, dispose of or encumber the Utility System or any of the Utility Assets with the exception of non-material transactions occurring in the ordinary course of business. Provided, however, such written consent and approval shall not be unreasonably withheld.

(C) From and after the date of execution of this Agreement, there shall be no material depletion of the Utility System, or the Utility Assets, nor any material adverse change in the condition of the Utility System or the Utility Assets; and, the Utility System and all of the Utility Assets shall be properly maintained within the custom and usage of the industry through the Transfer Date.

(D) Neither the County nor the City of Kissimmee has been cited nor notified, and no party hereto is, after due enquiry, aware of any violation of any governmental rule, regulation, permitting condition or governmental requirement of any type or nature applicable to the ownership, maintenance or operation of the Utility System, the Utility Assets or the manner in which the Utility Service is being performed, nor is any party

hereto aware of any conditions which by reason of the passing of time or the giving of notice by the appropriate governmental agency would constitute such a violation. Each party agrees that it shall be under a continuing obligation to notify the other parties hereto in writing in the event of a material change in the foregoing representations.

(E) The Utility System and the Utility Assets are located on real property which has been zoned by appropriate authorities under zoning certifications, special exceptions or variances which will permit the respective use of such parcels for water and wastewater utility purposes; and, to the extent it is determined that any Utility Asset or portion of a Utility System require a zoning certification, special exception or variance, each general purpose local government party hereto will endeavor in good faith to process and provide such zoning, special exceptions or variances without delay.

(F) The County and the City of Kissimmee respectively represent to the Authority that the real property and easement or property use rights to be conveyed to the Authority hereunder are in compliance with, and each respective party has not violated in connection with its ownership, use, maintenance, or operation of the Utility System or the Utility Assets, applicable environmental, federal, state, county or local laws relating to pollution or protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Resource Conservation and Recovery Act. Each general purpose local government party hereto respectively affirms it has not knowingly authorized the placing or depositing of

hazardous substances on the real estate and easements to be conveyed to the Authority except, if at all, in accordance with applicable law, and no party hereto has any actual knowledge of any hazardous substance having been, or currently being, placed or deposited on said real property and easements except in a lawful manner.

SECTION 5.02. CONVEYANCE DOCUMENTATION.

(A) On the Transfer Date the parties shall execute, deliver and accept a fee simple deed, bill of sale and a transfer, assignment and assumption agreement together with any other necessary and reasonable documents to effect the conveyance of record of the Utility System and the Utility Assets.

(B) From time to time after closing, each party hereto shall, upon the request to the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the Authority or perfecting undisputed possession by the Authority of the Utility System or any or all of the Utility Assets, including the establishment of record of Easements reasonably capable of enforcement by the Authority without resort to litigation or other extraordinary means for any water or wastewater utility facilities which are a part of the Utility System in existence or in use at the time of closing, or (2) otherwise fulfilling the obligations of the parties hereunder.

(C) The Authority hereby acknowledges that the County and the City of Kissimmee cannot provide any warranties or assurances regarding any real or personal

property interests in the Utility System or the Utility Assets; provided, however, the County and the City of Kissimmee affirmatively represent to the Authority, respectively, that neither or them have been notified of any claims or disputes with respect to the Utility System or any Utility Assets.

SECTION 5.03. TRANSFER DATE. It is anticipated that the transactions contemplated by this Agreement will be closed on a mutually agreed upon date on or before October 1, 2003. Time for closing may be extended by any party to no later than the last of the following occurrences: (A) October 1, 2004, or (B) ninety (90) days following validation of Acquisition Debt Obligations and either (1) the appeal period has expired without an appeal having been taken, or (2) any appeal has been resolved in favor of the Authority, the County and the City of Kissimmee. The closing shall be held at such place or offices convenient and mutually agreeable to the parties.

SECTION 5.04. TRANSFER OF PERMITS. It shall be the obligation and responsibility of each of the parties hereto to timely cooperate with the Authority to commence all requisite action to apply for and cause the transfer of all necessary permits and governmental approvals, including but not limited to the procedures referenced in Rule 62-4.120, Florida Administrative Code, 40 C.F.R. § 122.63(d) (1980) and 47 C.F.R. § 73 (1980) and shall use all reasonable efforts to obtain the timely transfer of such permits. Each party shall cooperate and provide all reasonably necessary assistance in this endeavor. Upon transfer the Authority shall assume all obligations under the permits and governmental approvals necessary for continued operation of the Utility System.

SECTION 5.05. RISK OF LOSS. At all times prior to and through the Transfer Date, the County and the City of Kissimmee, respectively, shall self-insure or maintain adequate fire and extended insurance coverage for the cost of any repairs to the Utility System or Utility Assets that may be required by casualty damage. The risk of loss during said period of time shall fall upon the County and the City of Kissimmee respectively. The risk of loss shall pass to the Authority on the Transfer Date.

ARTICLE VI

GENERAL PROVISIONS

SECTION 6.01. INTERLOCAL AGREEMENT PROVISIONS.

Portions of this Agreement constitutes a joint exercise of power, privilege or authority by and among the City of Kissimmee, the County and the Authority and shall be deemed to be an “interlocal agreement” within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Agreement shall be filed with the Clerk of the Circuit Court of Osceola County, Florida.

SECTION 6.02. CONTINUING DISCLOSURE OBLIGATIONS. The County and the City of Kissimmee, respectively, agree to cooperate with the Authority in the preparation of disclosure information relating to the Utility System, the Utility Assets or the provision of Utility Service for inclusion in any Authority bond offering documents and will provide a certificate executed by an authorized officer of the County and the City of Kissimmee, respectively, at the closing of bonds purchased in reliance upon such offering documents that, to the knowledge of such officer, the information does not contain any material mis-statements or omissions. The Authority shall pay the reasonable costs and expenses incurred by the County and the City of Kissimmee to comply with the provisions of this section.

SECTION 6.03. PAYMENT OF GENERAL PURPOSE LOCAL GOVERNMENTS' COSTS AND FEES.

(A) The Authority shall pay, or respectively reimburse each general purpose local government party hereto if already paid, from proceeds of the Acquisition Debt Obligations (1) the reasonable fees and disbursements of attorneys and other professionals retained by the County and the City of Kissimmee or otherwise advanced by the County or the City of Kissimmee, to assist with the negotiation, preparation and implementation of this Agreement through the Transfer Date, and (2) the drafting, development and passage of the special act creating and establishing the Authority through the Transfer Date.

(B) Through the Transfer Date, the Authority shall pay or reimburse the City of Kissimmee, from the Acquisition Debt Obligations, a reasonable estimate of the Transition Cost then due and owing. After the Transfer Date, the Authority shall pay or reimburse the City of Kissimmee the Transition Cost in the manner provided in Section 4.01 hereof.

SECTION 6.04. PROFESSIONAL FEES; COSTS.

(A) Except as expressly provided otherwise in this Agreement, each party shall be responsible for securing its own counsel for representation relative to the negotiation, preparation and implementation of this Agreement, and all other matters associated with the implementation or performance hereunder, unless otherwise specified herein; and, each party shall be responsible for the payment of the fees of its own attorneys,

engineers, accountants and other professional advisors or consultants in connection therewith.

(B) In any litigation arising out of this Agreement, the prevailing party in such litigation shall, subject to the limitation imposed by Section 768.28, Florida Statutes, be entitled to recover reasonable attorneys fees and costs.

SECTION 6.05. TERM OF AGREEMENT. The term of this Agreement shall commence on the first of the month in which the last of all the parties hereto execute this Agreement, and shall continue for an initial term of the following twenty-five (25) full Fiscal Years thereafter. This Agreement shall thereafter automatically renew for successive twenty-five (25) year periods unless the County and the City of Kissimmee both opt, not less than one year prior to the end of any term, not to renew or extend this Agreement. This Agreement may be terminated by law or at any time by a written agreement amongst all parties hereto; provided, however, that no termination shall impair the rights of any holders of Debt Obligations of the Authority.

SECTION 6.06. FAILURE OF PERFORMANCE.

(A) A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured.

(B) Unless otherwise provided herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement.

SECTION 6.07. DISPUTE RESOLUTION.

(A) The parties agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Either party may initiate the dispute resolution process by providing written notice to the other party.

(B) After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(C) If discussions among the parties fail to resolve the dispute within sixty (60) days of the notice described in subsection (A) hereof, the parties shall appoint a mutually acceptable neutral third party to act as a mediator. If the parties are unable to agree upon a mediator, any of the parties can request appointment of a mediator by the Chief Judge of the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida. The mediation contemplated by this subsection (C) is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. It is understood that any settlement may require approval of the County Commission of Osceola County, the City Commission of the City of Kissimmee and the Board of Supervisors of the Authority.

(D) If the parties are unable to reach a mediated settlement within 120 days of the mediator's appointment, any party may terminate the settlement discussions by written notice to the other party. In such event, either party may initiate litigation within 120 days of the notice terminating the settlement discussions. Failure by the party initiating the dispute resolution procedure to commence litigation within the 120 day period shall be deemed to constitute an acceptance of the interpretation or performance of the other parties.

SECTION 6.08. AMENDMENTS AND WAIVERS. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided. Each such amendment, supplement, modification or waiver of this Agreement shall be filed with the Clerk of the Circuit Court of Osceola County, Florida. Neither the failure nor any delay by any party hereto in exercising any right or power under this Agreement nor any course of dealing between or among the parties will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

SECTION 6.09. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered

or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for “next business day” service) to the parties at the following addresses:

Osceola County:	1 Courthouse Square Suite 4700 Kissimmee, Florida 34741 Attention: County Manager (with a separate copy sent to the County Attorney)
City of Kissimmee:	101 North Church Street Fifth Floor Kissimmee, Florida 34741 Attention: City Manager (with a separate copy sent to the City Attorney)
Authority:	101 North Church Street Second Floor Attention: Executive Director (with a separate copy sent to the general counsel for the Authority)

(B) Any of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three days after the date mailed.

SECTION 6.10. BINDING EFFECT. To the extent provided herein, this Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

SECTION 6.11. ASSIGNMENT. No assignment of this Agreement shall be made in whole or in part by any party without the express written consent of the other parties, which may be withheld in their sole discretion.

SECTION 6.12. SEVERABILITY. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 6.13. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 6.14. APPLICABLE LAW AND VENUE.

(A) This Agreement shall be governed by and construed in accordance with the laws of the State. Payments required hereunder shall be governed by the provisions of Chapter 218, Part VII, Florida Statutes, the Florida Prompt Payment Act, or its successor in function, or as otherwise mutually agreed to between the parties hereto.

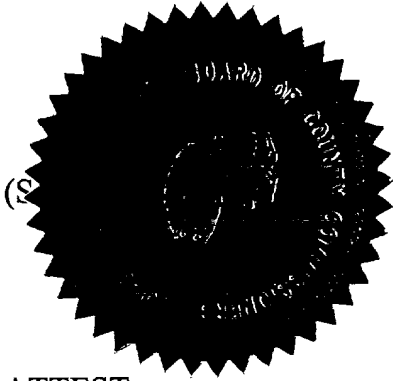
(B) Unless otherwise required by law or otherwise agreed to by all parties hereto, venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the Circuit Court in and for Osceola County, Florida.

SECTION 6.15. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The time period specified in this Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date or time. Any time

period provided for herein which ends on a Saturday, Sunday or legal holiday shall extend to 5 P.M. on the next business day.

SECTION 6.16. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

IN WITNESS WHEREOF, the County, the City of Kissimmee and the Authority have caused this Interlocal Agreement to be duly executed and entered into as of the 1st day of July 2003.

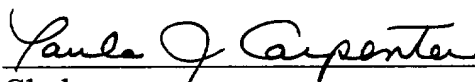


**BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA**

By: 
Chairman

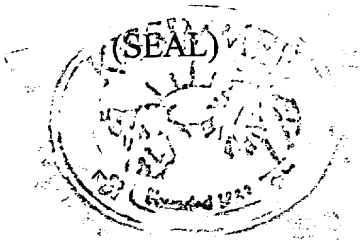
Date: July 17, 2003

ATTEST:


Clerk

IN WITNESS WHEREOF, the County, the City of Kissimmee and the Authority
have caused this Agreement to be duly executed and entered into as of the 1st day of July
2003.

THE CITY OF KISSIMMEE, FLORIDA



By: *George S. Gant*
Mayor C.C.M. - 5/12/03

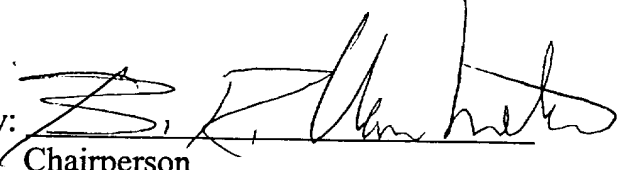
Date: July 21, 2003

ATTEST:

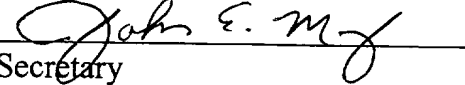
Prada P. Jaworski
City Clerk

IN WITNESS WHEREOF, the County, the City of Kissimmee and the Authority have caused this Interlocal Agreement to be duly executed and entered into as of the 1st day of July 2003.

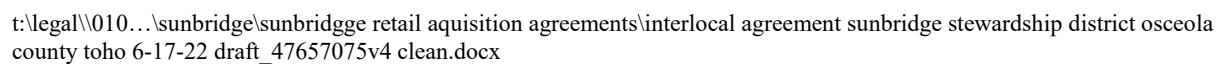
**BOARD OF SUPERVISORS OF
TOHOPEKALIGA WATER AUTHORITY**

By: 
Chairperson
Date: July 17, 2003

ATTEST:


Secretary

Location Map for the Sunbridge Stewardship District



ITEM 7.L

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 \$63,166.91.

Explanation

The Kissimmee Police Department is requesting approval to purchase thirteen (13) Motorola portable radios and accessories from Motorola Solution, Inc. Three (3) of these portable radios will be purchased for the three new positions approved in the FY2022-23 budget while the remaining ten (10) 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 \$63,166.91.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00130206 506494	PD2311	Decrease	\$14,600.00	\$14,576.98
00130206 506494	PD2314	Decrease	\$48,600.00	\$48,589.93

Financial Summary:

Adequate funding is available 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 \$63,166.91.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter: Mike Steigerwald

Attachment(s):

1. Motorola NASPO contract
2. Motorola Solutions Quote 3 \$14,576.98
3. Motorola Solutions Quote 10 \$48,589.93

City of Kissimmee

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



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

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

14-Dec-22		City of Kissimmee - Pamela Lynch				New Quote	
ITEM	MODEL #	DESCRIPTION	LIST PRICE	DISCOUNT	DISCOUNTED PRICE	QTY	EXTENDED PRICE
APX6000 Portable Radio							
1	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	\$3,595.00	27.00%	\$2,624.35	3	\$7,873.05
1a	H38	ENH: SMARTZONE OPERATION	\$1,320.00	27.00%	\$963.60	3	\$2,890.80
1b	G361	ENH: P25 TRUNKING SOFTWARE	\$330.00	27.00%	\$240.90	3	\$722.70
1c	G806	ENH: ASTRO DIGITAL CAI OP APX	\$567.00	27.00%	\$413.91	3	\$1,241.73
1d	G996	ENH: OVER THE AIR PROVISIONING	\$110.00	27.00%	\$80.30	3	\$240.90
1e	H122	ALT: 1/4- WAVE 7/800 GPS STUBBY	\$26.00	27.00%	\$18.98	3	\$56.94
1f	Q58	ADD: 3Y ESSENTIAL SERVICE	\$121.00	0.00%	\$115.00	3	\$345.00
1g	QA05570	ALT: LI-ION IMPRES 2 IP68 3400 MAH	\$115.50	27.00%	\$84.32	3	\$252.95
1h	QA01222	ADD: BELT CLIP	\$13.00	27.00%	\$9.49	3	\$28.47
2	T7914A	RADIO MANAGEMENT ONLINE	\$110.00	27.00%	\$80.30	3	\$240.90
3	NNTN8860	SINGLE UNIT CHARGER	\$169.56	27.00%	\$123.78	3	\$371.34
4	PMMN4099	REMOTE SPEAKER MIC, 3.5MM, IP68	\$142.56	27.00%	\$104.07	3	\$312.21
Total							\$14,576.98

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

14-Dec-22		City of Kissimmee - Pamela Lynch				New Quote	
ITEM	MODEL #	DESCRIPTION	LIST PRICE	DISCOUNT	DISCOUNTED PRICE	QTY	EXTENDED PRICE
APX6000 Portable Radio							
1	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	\$3,595.00	27.00%	\$2,624.35	10	\$26,243.50
1a	H38	ENH: SMARTZONE OPERATION	\$1,320.00	27.00%	\$963.60	10	\$9,636.00
1b	G361	ENH: P25 TRUNKING SOFTWARE	\$330.00	27.00%	\$240.90	10	\$2,409.00
1c	G806	ENH: ASTRO DIGITAL CAI OP APX	\$567.00	27.00%	\$413.91	10	\$4,139.10
1d	G996	ENH: OVER THE AIR PROVISIONING	\$110.00	27.00%	\$80.30	10	\$803.00
1e	H122	ALT: 1/4- WAVE 7/800 GPS STUBBY	\$26.00	27.00%	\$18.98	10	\$189.80
1f	Q58	ADD: 3Y ESSENTIAL SERVICE	\$121.00	0.00%	\$115.00	10	\$1,150.00
1g	QA05570	ALT: LI-ION IMPRES 2 IP68 3400 MAH	\$115.50	27.00%	\$84.32	10	\$843.15
1h	QA01222	ADD: BELT CLIP	\$13.00	27.00%	\$9.49	10	\$94.90
2	T7914A	RADIO MANAGEMENT ONLINE	\$110.00	27.00%	\$80.30	10	\$803.00
3	NNTN8860	SINGLE UNIT CHARGER	\$169.56	27.00%	\$123.78	10	\$1,237.79
4	PMMN4099	REMOTE SPEAKER MIC, 3.5MM, IP68	\$142.56	27.00%	\$104.07	10	\$1,040.69
						Total	\$48,589.93

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

ITEM 7.M

ESRI Small Municipal and County Government Enterprise Agreement

Request

Approval to renew the three-year Small Municipal and County Government Enterprise Agreement (SGEA) with Environmental Systems Research Institute (ESRI) in the amount of \$165,000.

Explanation

For the past fifteen years, the City of Kissimmee and Kissimmee Utility Authority (KUA) have jointly participated in an agreement with Environmental Systems Research Institute (ESRI) specifically designed to assist small governments with the software and maintenance costs associated with providing Geographical Information Systems (GIS). The Small Government Enterprise Agreement (SGEA) allows both the City and KUA coverage under one agreement. The combined license count and existing annual maintenance fees make it cost effective to utilize the SGEA to provide for unlimited installations of ESRI client - server GIS software as well as their cloud offerings.

The current agreement is due to expire in February 2023. The renewal agreement provides for a three-year commitment of \$55,000 annually, totaling \$165,000. The fee will be divided between both entities. The City's portion will be \$27,500 per year and KUA will pay \$27,500 annually. The Enterprise agreement will be in the City's name and the City will pay the fee directly to ESRI and then bill KUA for its portion. This payment arrangement has been in place and has worked well over the past fifteen years.

By utilizing the SGEA, the City will continue to realize extensive cost savings. Throughout the last fifteen years, the City and KUA have both benefited from adding user and server software at no additional cost; therefore, leveraging each entity's respective investments in GIS. These savings are compounded within the operational budget, as the ESRI annual maintenance fee will not increase as the number of licenses being used increases. Having access to unlimited licensing greatly increases the opportunity to expand GIS throughout other departments without having to expend additional capital dollars on software licenses and without increasing the operational budget for annual maintenance.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
56060103-504647			28,000	27,500

Financial Summary:

The City's portion for year one is included in the approved FY 22/23 Information Technology operating budget and the two subsequent years will be budgeted in the FY 2023/2024 and FY 2024/2025 operating budgets.

Recommendation

City of Kissimmee

Staff recommends approval to renew the three-year Small Municipal and County Government Enterprise Agreement (SGEA) with Environmental Systems Research Institute (ESRI) in the amount of \$165,000.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Information Technology
Presenter: Mike Steigerwald

Attachment(s):

1. (S) ESRI Small Municipal and County Government Enterprise Agreement (SGEA) 2023
2. (S) KUA City MOU re cost sharing for ESRI license (KUA legal edits - 12-27-22)(Final)

October 24, 2022

Mr. Tony Curtis
City of Kissimmee
101 N Church St
Kissimmee, FL 34741

Dear Tony,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-EA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Robyn Garrett
Esri Account Manager
704-541-9810 *1-8640
rgarrett@esri.com



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/24/2022 To: 1/22/2023

Quotation # Q-467676

Date: October 24, 2022

Customer # 19753 Contract #

City of Kissimmee
IT Dept
101 N Church St
Kissimmee, FL 34741

ATTENTION: Tony Curtis
PHONE: (407) 518-2191
EMAIL: tony.curtis@kissimmee.gov

Material	Qty	Term	Unit Price	Total
168179	1	Year 1	\$55,000.00	\$55,000.00
Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement				
168179	1	Year 2	\$55,000.00	\$55,000.00
Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement				
168179	1	Year 3	\$55,000.00	\$55,000.00
Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement				

Subtotal: \$165,000.00

Sales Tax: \$0.00

Estimated Shipping and Handling (2 Day Delivery): \$0.00

Contract Price Adjust: \$0.00

Total: \$165,000.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:

Robyn Garrett

Email:

rgarrett@esri.com

Phone:

(704) 541-9810 x8640

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

Esri Use Only:
 Cust. Name City of Kissimmee
 Cust. # 19753
 PO # _____
 Esri Agreement # _____



SMALL ENTERPRISE AGREEMENT COUNTY AND MUNICIPALITY GOVERNMENT (E214-3)

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A
List of Products

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager, ArcGIS Data
 Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise and Workgroup
 (Advanced and Standard)
 ArcGIS Monitor
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS
 Workflow Manager

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS
 Spatial Analyst, ArcGIS Engine Geodatabase Update,
 ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime (Standard)
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer
 Two (2) ArcGIS CityEngine Single Use Licenses
 250 ArcGIS Online Viewers
 250 ArcGIS Online Creators
 37,500 ArcGIS Online Service Credits
 250 ArcGIS Enterprise Creators
 5 ArcGIS Insights in ArcGIS Enterprise
 5 ArcGIS Insights in ArcGIS Online
 50 ArcGIS Tracker for ArcGIS Enterprise
 50 ArcGIS Tracker for ArcGIS Online
 4 ArcGIS Parcel Fabric User Type Extensions (Enterprise)
 4 ArcGIS Utility Network User Type Extensions (Enterprise)
 4 ArcGIS Trace Network User Type Extensions (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	4
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: Tony Curtis

Telephone: 407-518-2191

Address: 101 Church Street

Fax: _____

City, State, Postal Code: Kissimmee, FL, 34741

E-mail: Tony.Curtis@kissimmee.gov

Country: United States

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF KISSIMMEE AND THE KISSIMMEE UTILITY AUTHORITY TO SHARE THE COSTS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT ENTERPRISE AGREEMENT FOR ACCESS TO GEOGRAPHIC INFORMATION SYSTEM TECHNOLOGY

The **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address is 101 Church Street, Kissimmee, Florida 34741 referred to as “City,” and the **KISSIMMEE UTILITY AUTHORITY**, a body politic organized and existing pursuant to separate charter amendment of the City of Kissimmee, Florida and the laws and constitution of the State of Florida, whose address is 1701 W. Carroll Street, Kissimmee, Florida 347471, hereinafter referred to as “KUA,” collectively hereinafter referred to as “Parties,” enter into this Memorandum of Understanding (“MOU”) to share the costs of the ESRI Small Municipal and County Government Enterprise Agreement.

RECITALS

City and KUA have partnered successfully over the years to share the costs equally of a single ESRI Small Municipal and County Government Enterprise Agreement (“Enterprise Agreement”) which gives both City and KUA access to Geographic Information System (“GIS”) technology.

City and KUA’s current Enterprise Agreement is due to expire on March 22, 2023.

ESRI again has offered City and KUA the opportunity to share a single Enterprise Agreement.

City and KUA wish to enter into such an agreement where both Parties continue to share the costs thereof equally.

City and KUA believe it would be in the interest of both Parties to spell out and clarify their various responsibilities with regard to the Enterprise Agreement as such clarity will enhance the cooperation and efficiency of such arrangements going forward.

City and KUA wish to enter into a Memorandum of Understanding to ratify said expectations.

In consideration of the mutual promises contained herein and for other good and value consideration, the receipt and sufficiency of which are hereby acknowledged, each party hereby promises to the other as follows:

MEMORANDUM OF UNDERSTANDING

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **TERM.** The term of this MOU is from January 17, 2023, to December 31, 2025. This MOU shall automatically renew on January 1, 2025 through December 31,

2027, and will automatically renew thereafter for an additional three-year term unless terminated for cause or terminated without cause by either Party through the giving of thirty (30) days advance written notice prior to the expiration of any applicable term.

3. CITY RESPONSIBILITIES.

- A. City shall pay in full each correct invoice received from ESRI under any existing Enterprise Agreement in accordance with the terms of the Enterprise Agreement.
- B. City shall invoice KUA for one-half the amount paid for each correct invoice received under any existing Enterprise Agreement within 30 days of payment.
- C. City shall include in any invoice to KUA a copy of the invoice paid to ESRI under any existing Enterprise Agreement and proof of payment of the invoice received under the existing Enterprise Agreement.
- D. City shall comply with all terms and conditions of any existing Enterprise Agreement with ESRI including those terms and conditions found in the Quotation and the Master Agreement.
- E. City shall provide KUA with a copy of any newly executed Enterprise Agreement including the Quotation within 30 days of execution of such agreement.
- F. If City's Commission fails to appropriate the funds necessary to make payments under any existing Enterprise Agreement or if City determines that ESRI has materially breached the Enterprise Agreement, then City in its sole discretion may terminate the Enterprise Agreement. If City wishes to terminate any existing Enterprise Agreement for any other reason, then KUA must consent in writing to termination.

4. KUA RESPONSIBILITIES.

- A. KUA shall pay in full each invoice received from City related to the costs of any existing Enterprise Agreement within forty-five (45) days and according to the terms of the invoice.
- B. KUA shall comply with all terms and conditions of any existing Enterprise Agreement with ESRI including those found in the Quotation and the Master Agreement.

C. If KUA's governing body fails to appropriate the funds necessary to make payments under any existing Enterprise Agreement, then City shall either pay the full cost of the Enterprise Agreement for the remainder of the Enterprise Agreement and revoke KUA's access to GIS or terminate the Enterprise Agreement. If KUA determines that ESRI has materially breached the Enterprise Agreement, then KUA in its sole discretion may cause City to terminate the Enterprise Agreement. If KUA wishes to terminate any existing Enterprise Agreement for any other reason, then City must consent in writing to termination.

5. **TERMINATION FOR CAUSE.** The City may terminate this MOU for cause in the event of any breach by KUA of the conditions set forth in this MOU, including any non-performance of duties. The City's Designated Representative shall send a certified letter to KUA requesting that KUA show cause why the MOU should not be terminated. If adequate assurances or acceptable reasons are not provided to the City within fifteen (15) days of the receipt by KUA of said show cause notice, the City may consider KUA to be in default and may immediately terminate this MOU. Likewise, KUA may terminate this MOU for cause in the event of any breach by the City of the conditions set forth in this MOU, including any non-performance of duties. KUA's Designated Representative shall send a certified letter to the City requesting that the City show cause why the MOU should not be terminated. If adequate assurances or acceptable reasons are not provided to KUA within fifteen (15) days of the receipt by the City of said show cause notice, KUA may consider the City to be in default and may immediately terminate this MOU.
6. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in the MOU shall be construed as a waiver of the City's or KUA's statutory sovereign immunity pursuant to Section 768.28, Florida Statutes. This provision shall remain in effect even after the termination of the MOU.
7. **NONASSIGNMENT.** Parties shall not, without prior consent of the other Party, assign this MOU or any portion hereof. Any unauthorized assignment shall be void and shall terminate the MOU at the non-assigning Party's option. Neither Party's interest in this MOU is assignable by operation of law.
8. **APPLICABLE LAWS.** This MOU shall be governed, construed, and enforced in accordance with the laws of the State of Florida.
9. **JURY TRIAL WAIVER/VENUE/WAIVER OF ATTORNEY FEES.** It is mutually agreed by the parties that each do hereby waive the right to a jury trial in any action, proceeding, claim or counterclaim which may be brought by either of the parties hereto against the other on any matter concerning or arising of this MOU.

Venue shall be Osceola County, Florida. Each party waives the right to attorney's fees in any action to enforce this MOU.

10. **WAIVER.** No failure of either the City or KUA to insist upon strict performance in any one or more terms of this MOU, nor any failure of the City or KUA to exercise any right or remedy under this MOU shall constitute a waiver of any such term, right, or remedy the City or KUA may have, or future rights to enforce compliance.
11. **NOTICES.** The City designates Tony Curtis, the Assistant Director of the Information Technology Department, to represent the City in all matters pertaining to and arising from the work and performance of this MOU. Notice under this MOU shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

Notice to City: IT Department Attn: Assistant Director 101 Church Street Kissimmee, FL 34741	Notice to KUA: Operations Department Attn: AVP – E&O 1701 W Carroll St., Kissimmee, FL 34741
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12. **ENTIRETY OF AGREEMENT.** This MOU shall constitute the entire MOU of the Parties. Any prior understanding or representations of any kind preceding the date of this MOU shall not be binding on either party except as incorporated herein.
13. **MODIFICATIONS.** Any modifications or additional obligations assumed by either party in connection with this MOU shall be binding only if evidenced in writing and signed by each party or an authorized representative of each party.
14. **BINDING.** This MOU 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 MOU.
15. **SEVERABILITY.** In case any one or more of the provision contained in this MOU 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 MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

[Signatures on following page.]

Agreed to on the dates set forth below:

Kissimmee Utility Authority

By: _____
Brian Horton

Its: President and General Manager

Date: _____

City of Kissimmee, a municipal corporation

By: _____
Olga Gonzalez

Its: Mayor

Date: _____

ITEM 7.N

In-House Professional Services Agreement with Kimley Horn & Associates to Alleviate Engineering Staffing Vacancies

Request

Approval to use Consultant Services through our Continuing Services Contract (RFQ2021-003) for in-house engineering services.

Explanation

As a result of staffing shortages resulting from vacancies in several key Engineering positions, the Public Works & Engineering Department is requesting approval to use In-House Consultant Services to facilitate engineering development review and capital projects. This service will be provided by Kimley Horn, one of the City's Continuing Services Consultants, who was selected on July 6th, 2021 through the RFQ2021-003.

The initial term of this agreement will be three (3) months with the option to extend the agreement for three (3) additional 3-month periods, if needed. Funding to cover this agreement will be covered by a transfer from the Engineering Salaries and Wages account to the Engineering Professional Services account.

Recommendation

Staff recommends City Commission approval to use In-House Consultant Services through our Continuing Services Contract (RFQ2021-003), and authorizing the City Manager to exercise options to extend the agreement as needed.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter: Mike Steigerwald

Attachment(s):

1. (S) Work Order #1
2. (S) Professional Service Agreement with Kimley Horn
3. RFQ2021-003 Continuing Service Agreement



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

Work Order #: **1**

Purchase Order#:

DATE: **1/6/23**

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to **Kimley-Horn and Associates, Inc** with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

In-House Consulting Services to facilitate Engineering & Construction Plan reviews.

FORM OF COMPLETED DELIVERABLES:

Engineering and construction plan reviews.

BASIS OF PAYMENT: Services shall be made on the basis of **Lump sum** method in accordance with the Scope of Services, the total not to exceed **\$37,350.00** without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within **90** calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Engineering and construction plan Reviews	\$ 37,350.00
2)	
3)	
4)	
5)	
	\$ 37,350.00
Contract Dollars:	\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$37,350.00

Accepted By:

(Signature)

Title/Position:

Hao Chau, P.E., Vice President

Requested By:

(Signature)

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

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, by and between **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address is 101 Church Street, Kissimmee, Florida 34741, hereinafter referred to as "CITY," and **KIMLEY-HORN AND ASSOCIATES, INC.**, a Florida corporation, whose address is 189 S. Orange Avenue, Suite 1000, Orlando, FL 32801 hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, the City is experiencing difficulties in filling certain positions within the Public Works Department, which is impacting operations and city project goals;

WHEREAS, CITY has entered into a Continuing Professional Engineering Services contract with Kimley-Horn and Associates, Inc. on July 6, 2021, through a competitive selection process (RFQ 2021-003); and

WHEREAS, CITY has determined that it is in its best interest to engage Kimley-Horn and Associates, Inc. as a consultant for the purpose of providing Technical Support Staff Assistance, as further detailed in Exhibit A, fully incorporated herein and made a binding part hereof,

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

Section 1. Recitals. The foregoing recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

Section 2. Term. This Agreement shall commence upon Commission approval and shall be in effect for three (3) months from that date, unless earlier terminated as provided in this Agreement. CITY shall have the option of extending this Agreement for up to three (3) additional three (3) month periods upon the same terms and conditions stated in this Agreement.

Section 3. Contract Provisions. The parties hereto agree to be bound by all of the terms and conditions of the Cooperative Contract unless otherwise modified or specified herein.

Section 4. Services and Pricing. CONSULTANT shall provide services as specified in Exhibit A, Scope of Services. CITY shall utilize the services provided by CONSULTANT, as may be deemed necessary by CITY, in CITY's sole and absolute discretion. Nothing in this Agreement shall be construed as requiring CITY to utilize any services provided by CONSULTANT. CONSULTANT will provide services at the pricing provided in the Scope of Services, Exhibit A.

Section 5. Insurance Requirements. CONSULTANT shall maintain the minimum level of insurance contained in the Cooperative Contract. CONSULTANT shall furnish CITY with a Certificate of Insurance on a current ACORD Form signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability, Commercial General Liability, and Business Auto). CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Workers' Compensation policy shall contain a waiver of subrogation against CITY. Commercial General Liability will be at a limit of not less than \$1,000,000 for bodily injuries, death, and property damage resulting from any one occurrence, and \$2,000,000 annual aggregate. Policies shall include an endorsement that will give CITY thirty (30) days notice of cancellation.

Section 6. Indemnification. Pursuant to Section 725.08(1), F.S. the DESIGN ENGINEER shall indemnify and hold harmless the CITY from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence,

recklessness, or intentionally wrongful conduct of the DESIGN ENGINEER and other persons employed or utilized by the design professional in the performance of the contract.

Section 7. Sovereign Immunity. CITY expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted or may be adopted by the Florida Legislature and the cap on the amount of liability of CITY for damages, attorney fees, and costs, regardless of the number or nature of claims in tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against CITY which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

Section 8. Notice. Any notice delivered with respect to this Agreement must be in writing and will be deemed to be delivered (whether or not actually received) when (i) hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of the notice in the United States Mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address set forth below, or such other address or to such other person as the party may have specified by written notice to the other party delivered in according to this provision:

As to CITY:	Natrevia L. Gradney-Mitchell, P.E. Director of Public Works & Engineering City of Kissimmee 101 Church Street, Suite 301
Kissimmee, Florida 34741	
As to CONSULTANT:	Hao Chau, P.E. Vice President Kimley-Horn and Associates, Inc. 189 S. Orange Avenue Suite 1000 Orlando, Florida 32801

Section 9. Employee Status. Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement are deemed not to be the employees or agents of CITY, nor do these employees have any claims to pensions, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to CITY's officers and employees either by operation of law or by CITY.

Section 10. Tax Withholdings and Deductions. CONSULTANT agrees to withhold applicable Federal Income Tax (Withholding Tax) from the wages of all employees. CONSULTANT agrees to comply with the Federal Insurance Contributions Act, which provides that Social Security contributions must be made by both the employee and CONSULTANT for all wages paid. CONSULTANT agrees to make other deductions such as child support, wage garnishments and student loans from an employee's pay as mandated by law.

Section 11. Employee Eligibility Verification. In accordance with State and Federal law CONSULTANT agrees to use the Employment Eligibility Verification Program (E-Verify), an internet-based system established by the U.S. Department of Homeland Security to determine the immigration and work eligibility status of prospective employees. CONSULTANT agrees to certify to CITY that it is in compliance with the Federal E-verify Program. CITY reserves the right to take action against CONSULTANT for non-compliance with the E-Verify system; potential actions may include but are not limited to cancellation of this Agreement and/or suspending or barring CONSULTANT from performing services for CITY. CITY will not intentionally award publicly funded contracts or enter into agreements with CONSULTANTs who knowingly employ unauthorized alien workers, constituting a violation of the employment provisions contained in 8 USC, Section 134a(e) and Section 274A(e) of the Immigration and

Nationality Act ("INC"). Violations of this section shall be grounds for unilateral cancellation of this Agreement by CITY.

Section 12. Code of Ethics. CONSULTANT agrees that its employees will be instructed and obligated to abide by the Standards of Conduct for Public Officers, Employees of Agencies as specified in Chapter 112, Florida Statutes.

Section 13. CITY Policy and Procedure. CONSULTANT employees shall be required to adhere to certain CITY policies and procedures, including Departmental procedures in addition to CONSULTANT policies and procedures in the performance of services for the CITY. Nothing herein shall be construed as giving CITY authority to discipline CONSULTANT employees for violations of CITY policy and procedure, and the sole responsibility and control of the employees shall lie with the CONSULTANT.

Section 14. Equal Opportunity Employer. CONSULTANT is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. No person shall be discriminated against in employment, or in seeking employment because of such individual's race, religion, color, sex, age, national origin, marital status, disability, or veteran status, in all terms, conditions and privileges of employment, including hiring, probation, training and development, promotion, transfer, compensation, benefits, layoff, programs, termination and retirement.

Section 15. Public Records Law.

(a) CONSULTANT acknowledges CITY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that CITY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the

materials created under this Agreement and that said statute controls over the terms of this Agreement.

(b) CONSULTANT specifically acknowledges its obligations to comply with Section 119.071, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records that ordinarily and necessarily would be required by CITY in order to perform the services required under this Agreement;

(2) provide the public with access to public records on the same terms and conditions that CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and

(4) meet all requirements for retaining public records and transfer, at no cost to CITY, all public records in possession of CONSULTANT upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to CITY in a format that is compatible with the information technology system of CITY.

(c) Failure to comply with this Section shall be deemed a material breach of this Agreement, for which CITY may terminate this Agreement immediately upon written notice to CONSULTANT.

Section 16. Auditing, Records and Inspections. In the performance of this Agreement, the CONSULTANT shall keep books, records and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Throughout the term of this Agreement, books records and accounts related to the performance of this Agreement shall be open

to inspection during regular business hours by an authorized representative of the Internal Audit Department of the Clerk of the Circuit Court and Comptroller and shall be retained by the CONSULTANT for a period of three (3) years after termination or completion of the Agreement, or until the full Internal Audit Department of the Clerk of the Circuit Court and Comptroller audit is complete, whichever comes first. The CITY shall retain the right to audit the books during the three year retention period. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, chapter 119, Florida Statutes. The Internal Audit Department of the Clerk of the Circuit Court and Comptroller also has the right to conduct an audit within sixty (60) days from the effective date of this Agreement to determine whether CONSULTANT has the ability to fulfill its contractual obligations to the satisfaction of the CITY. The CITY has the right to terminate this Agreement based upon its findings in this audit without regard to the termination provision set forth herein.

Section 17. Termination.

(a) The CITY may with prior written notice, terminate this Agreement, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONSULTANT to fulfill its obligations under this Agreement. Upon receipt of such notice, the CONSULTANT shall:

(1) Immediately discontinue all Services affected unless the notice directs otherwise, and

(2) Deliver to the CITY all data, reports, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.

(3) The CONSULTANT shall be paid for Services actually rendered to the date of termination.

(b) The CONSULTANT may, upon providing the CITY sixty (60) days prior written notice, terminate this Agreement, in whole or in part, at any time, either for the

CONSULTANT's convenience or because of the failure of the CITY to fulfill its obligations under this Agreement. Upon receipt of such notice, the CITY shall instruct CONSULTANT to either (i) immediately discontinue providing all Services and pay CONSULTANT for Services actually rendered to the date of termination; or (ii) continue providing Services until the first to occur of the following: (A) the expiration of the sixty (60) day time period, or (B) the CITY's delivery of written notice to CONSULTANT that it is to discontinue further Services.

(c) The rights and remedies of the CITY and the CONSULTANT provided for in this Section 17 are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

Section 18. Governing Law. The laws of the State of Florida govern the validity, enforcement and interpretation of this Agreement. Osceola County is the sole venue for any legal action in connection with this Agreement.

Section 19. Conflict. To the extent that any conflict shall arise between a CITY Purchase Order or this Agreement and the terms and conditions of the Continuing Professional Engineering Services Contract, the terms and conditions of this Agreement shall prevail.

Section 20. Joint Authorship. This Agreement shall be construed as resulting from joint negotiations and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

Section 21. Headings and Captions. All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement and may not be used to define, describe, interpret or construe any provision of this Agreement.

[Balance of this page left intentionally blank; signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST

KIMLEY-HORN AND ASSOCIATES, INC.

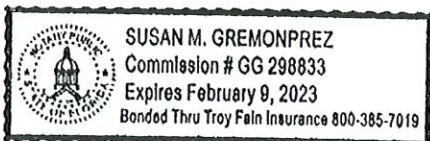
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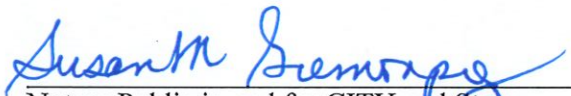

Title: Hao Chau, P.E.
Vice President

STATE OF Florida)
CITY OF Orange)

I HEREBY CERTIFY that, on this 6th day of January, 2023 before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Hao Chau, Vice President of Kimley-Horn and Associates, Inc., a corporation organized under the laws of the State of Florida, who is ☒ personally known to me or ☐ who has produced N/A as identification and did take an oath. They acknowledged before me that they executed the foregoing instrument as such officer in the name and on behalf of the corporation.

[NOTARY SEAL]




Notary Public in and for CITY and State
aforementioned.

CITY OF KISSIMMEE, FLORIDA

By: _____
Olga Gonzalez, Mayor

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by means of ☐ physical presence or ☐ online notarization, by _____ as _____ for Olga Gonzalez, as Mayor of the City of Kissimmee, who is personally known to me or has produced identification.

Notary Seal

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

Linda Hansell, City Clerk

Approved as to form and legality

City Attorney



December 2, 2022

Ashley L. Willis, P.E.
Assistant Director / City Engineer
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

Re: Development Review Services Scope and Fee

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letterscope (the "Scope") to the City of Kissimmee, FL ("City") for providing development review services. This Scope is for work in accordance with the terms of the Professional Services Agreement to be executed by City and Kimley-Horn and, which is incorporated herein by reference.

Project Understanding

The City has requested assistance in performing development review services on an as - needed basis to support the City's staff. It is anticipated that the initial term will be three (3) months with the option of extending the term for up to three (3) additional three (3) month periods. This Scope covers the initial three (3) month term. The engineering review services will include the following specific scope of services to be provided as requested.

Specific Scope of Basic Services

Task 1 – Development Review Services

Kimley-Horn will provide the following development review services on an as-needed basis. Each review request will be issued by the CITY via email for Kimley-Horn to begin services.

- Perform a drainage design review of the plans, specifications, calculations, and reports for general compliance with applicable City, Osceola County, South Florida Water Management District ("SFWMD") and Florida Department of Transportation ("FDOT") standards. These reviews will focus on drainage design only and shall not include comments concerning other areas of design unless there is a direct or indirect impact on the drainage design.
- Perform a review of primary and secondary drainage systems including storm drains, storm pipe capacity, stormwater treatment and attenuation and capability to safely discharge offsite.
- Perform technical reviews related to floodplain management.

Schedule

Kimley- Horn will begin reviewing the packages once all the documents are received. The above services will be provided as expeditiously as practicable to meet a mutually agreed upon schedule.



Method of Compensation

Kimley-Horn will perform the services in Tasks 1 on a labor fee plus expense basis with the maximum labor fee shown below. Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the City.

Task	Description	Limiting Amount Fee
Task 1	Development Review Services	\$37,350.00
Total:		\$37,350.00

Labor fee will be billed on an hourly basis according to the Master Agreement for Continuing Professional Engineering Services dated July 6, 2021 rate schedule.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

By: Hao Chau, P.E.
Vice President

CITY OF KISSIMMEE

SIGNED: Ashley L. Willis
PRINTED NAME: Ashley L. Willis
TITLE: City Engineer
DATE: 11/6/23

December 2, 2022

KIMLEY-HORN AND ASSOCIATES, INC.

Project: Development Review Services

Client: City of Kissimmee

Summary of Fees

Project: Development Review Services	Lump Sum	Limiting Amount
1. Development Review Services		\$ 37,350.00
TOTAL LABOR FEES:	\$ -	\$ 37,350.00



Consultant Name: <u>Kimley-Horn and Associates, Inc.</u>											
Work Effort and Fee Estimate Table											
Project: Development Review Services											
Task	Senior Engineer		Professional		Analyst		Senior CADD Operator		Secretary/Clerical		Task Totals
	hrs.	rate	hrs.	rate	hrs.	rate	hrs.	rate	hrs.	rate	hrs. rate
		\$ 255.00		\$ 160.00		\$ 125.00		\$ 145.00		\$ 90.00	
1. Development Review Services	90	\$ 22,950.00	90	\$ 14,400.00		\$ -		\$ -		\$ -	180 \$ 37,350.00
Total Billable Labor											180 \$ 37,350.00

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND KIMLEY-HORN AND ASSOCIATES, INC.
FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 6th day of July, 2021 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "CITY" and **KIMLEY-HORN AND ASSOCIATES, INC.** whose address is 421 Fayetteville St. Suite 600, Raleigh, North Carolina 27601, hereinafter "DESIGN ENGINEER" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of the City to retain competent and qualified firms to provide future professional engineering services on-going general engineering services to include, but not limited to, the design of roadway, pedestrian and bicycle paths, intersections, drainage projects, and other related tasks as may be assigned by the City, such services hereinafter referred to as "ASSIGNMENT"; and

WHEREAS, the CITY advertised RFQ 2021- 003, titled "Continuing Contract for Engineering Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the CITY has determined that **KIMLEY-HORN AND ASSOCIATES, INC.** is qualified to provide the services and desires to award a continuing services contract to DESIGN ENGINEER consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1. GENERAL

- 1.1 DESIGN ENGINEER shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the DESIGN ENGINEER, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the DESIGN ENGINEER has submitted to the CITY detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the DESIGN ENGINEER desires to change the key engineering personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the CITY for prior approval. Key engineering personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The DESIGN ENGINEER acknowledges that the CITY has retained other design engineers, engineering and otherwise, and that coordination between said design engineers and the DESIGN ENGINEER may be necessary from time to time for the successful completion of the Assignments. The DESIGN ENGINEER agrees to provide such coordination as necessary within the Scope of Engineering Services contained in Exhibit "A".

- 1.4 The DESIGN ENGINEER will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the DESIGN ENGINEER shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.
- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and DESIGN ENGINEER mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the DESIGN ENGINEER during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the parties for a period of two (2) years with three (3) optional one year extensions.

SECTION 2. SCOPE OF SERVICES

The DESIGN ENGINEER shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the parties hereto, duties of the DESIGN ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The DESIGN ENGINEER agrees to perform those engineering services described in "EXHIBIT A - SCOPE OF ENGINEERING SERVICES" which is attached hereto and made a part hereof. Services to be provided by the DESIGN ENGINEER shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the DESIGN ENGINEER describing the services desired and providing a basis for compensation to the DESIGN ENGINEER.

2.2 SPECIAL ENGINEERING SERVICES

The CITY and the DESIGN ENGINEER agree that there may be certain additional services required to be performed by the DESIGN ENGINEER during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the DESIGN ENGINEER, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as "EXHIBIT B - ADDENDUM FORM", which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the DESIGN ENGINEER:

- 3.1 Furnish the DESIGN ENGINEER with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the DESIGN ENGINEER for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the DESIGN ENGINEER.
- 3.2 Make CITY personnel available where required and necessary to assist the DESIGN ENGINEER. The availability and necessity of said personnel to assist the DESIGN ENGINEER shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the DESIGN ENGINEER to enter upon public lands and assist the DESIGN ENGINEER in gaining access to private lands as required for the DESIGN ENGINEER within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the DESIGN ENGINEER and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the DESIGN ENGINEER'S services, or become aware of any issue or changes necessary to the work of the DESIGN ENGINEER.
- 3.7 Following the DESIGN ENGINEER'S preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

- 4.1 **GENERAL** - CITY shall pay DESIGN ENGINEER for engineering services in one of two forms:
 - A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and DESIGN ENGINEER, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
 - B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.
- 4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for professional services and include expenses incurred by the DESIGN ENGINEER and DESIGN

ENGINEER'S employees as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 **INVOICE PROCESSING**

Payments on account of the DESIGN ENGINEER'S services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The DESIGN ENGINEER will be notified of any questionable items contained in invoices submitted by the DESIGN ENGINEER within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the DESIGN ENGINEER's invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the DESIGN ENGINEER the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
Public Works & Engineering Department
City of Kissimmee
101 N. Church Street
Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the DESIGN ENGINEER employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 **PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION**

In the event that an Addendum of this Agreement is terminated or canceled, or the DESIGN ENGINEER's services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.5 **ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT**

If instructed to do so by the CITY, the DESIGN ENGINEER shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the DESIGN ENGINEER, the DESIGN ENGINEER shall be entitled to additional compensation. The additional compensation shall be requested by the DESIGN ENGINEER on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 WORK COMMENCEMENT

The DESIGN ENGINEER will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 IMPLEMENTATION SCHEDULE

The DESIGN ENGINEER and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the DESIGN ENGINEER is delayed due to no fault of the DESIGN ENGINEER, which delays the completion of any Addendum of the Assignment, the DESIGN ENGINEER shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the DESIGN ENGINEER will be negotiated to the mutual agreement of the CITY and the DESIGN ENGINEER in the event such delay causes any Addendum's costs to increase for reasons beyond the DESIGN ENGINEER's control.

5.3 TIME FOR COMPLETION

The provisions of this Agreement and the various rates of compensation for DESIGN ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 GENERAL

The CITY designates the Director of the Public Works & Engineering Department, or his designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or his designated representative, shall have the following responsibilities:

6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the DESIGN ENGINEER and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the DESIGN ENGINEER;

6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Agreement;

- 6.1.3 Giving prompt written notice to the DESIGN ENGINEER whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the DESIGN ENGINEER's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 **DESIGNATED REPRESENTATIVES**

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

CITY OF KISSIMMEE:
Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

KIMLEY-HORN AND ASSOCIATES, INC.
Nicole R. Heck, P.E., Project Manager
189 S. Orange Avenue, Suite 1000
Orlando, FL 32801

SECTION 7. CHANGES IN SCOPE

The CITY or the DESIGN ENGINEER may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of DESIGN ENGINEER's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the DESIGN ENGINEER, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 **TERMINATION BY CITY FOR CAUSE**

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the DESIGN ENGINEER as a direct result of the DESIGN ENGINEER's failure to perform; or
- 8.1.2 The quality of the services performed by the DESIGN ENGINEER is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The DESIGN ENGINEER or any employee or agent of the DESIGN ENGINEER is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DESIGN ENGINEER, or
- 8.1.4 The DESIGN ENGINEER becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The DESIGN ENGINEER violates the Standards of Conduct provisions in Section 12.0 herein.
- 8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the DESIGN ENGINEER requesting that the

DESIGN ENGINEER show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the DESIGN ENGINEER of said show cause notice, the CITY may consider the DESIGN ENGINEER to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY DESIGN ENGINEER FOR CAUSE

The DESIGN ENGINEER may cancel this Agreement if:

- 8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or
- 8.2.2 The CITY fails to pay the DESIGN ENGINEER in accordance with Section 4.0 - Compensation.
- 8.2.3 In the event of either of the causes described in Section 8.2, the DESIGN ENGINEER may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the DESIGN ENGINEER within fifteen (15) days of the receipt by the CITY of said show cause notice, then the DESIGN ENGINEER may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 TERMINATION BY CITY WITHOUT CAUSE

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the DESIGN ENGINEER of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 PAYMENT IN THE EVENT OF TERMINATION

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the DESIGN ENGINEER to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the DESIGN ENGINEER. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 ACTION FOLLOWING TERMINATION

- 8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.
- 8.5.2 In the case of the CITY terminating the DESIGN ENGINEER, the DESIGN ENGINEER shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the DESIGN ENGINEER in performing the services under this Agreement, regardless of whether the work on such documents has been completed or is in progress.

8.6 SUSPENSION

- 8.6.1 The performance of the DESIGN ENGINEER's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the DESIGN ENGINEER's services hereunder, the CITY shall so notify the

DESIGN ENGINEER in writing, such suspension becoming effective upon the date of its receipt by the DESIGN ENGINEER, and the CITY shall promptly pay to the DESIGN ENGINEER all fees which have become due and payable to the DESIGN ENGINEER to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the DESIGN ENGINEER for the suspended services unless and until the CITY notifies the DESIGN ENGINEER that the services of the DESIGN ENGINEER called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the DESIGN ENGINEER's services hereunder are to be resumed, the DESIGN ENGINEER shall complete the services of the DESIGN ENGINEER called for in this Agreement and the DESIGN ENGINEER shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the DESIGN ENGINEER under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the DESIGN ENGINEER under this Agreement unless and until the DESIGN ENGINEER has attained that state of work where the same would be due and payable to the DESIGN ENGINEER under the provisions of this Agreement.

- 8.6.2 If the aggregate time of the CITY's suspension or suspensions of the DESIGN ENGINEER's services under any Addendum of this Agreement exceeds sixty (60) days, then the DESIGN ENGINEER and the CITY shall, upon request of the DESIGN ENGINEER, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the DESIGN ENGINEER hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the DESIGN ENGINEER for the balance of the services to be performed hereunder. No increase in compensation to the DESIGN ENGINEER shall be allowed unless it is based upon clear and convincing evidence of an increase in the DESIGN ENGINEER's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

Pursuant to Section 725.08(1), F.S. the DESIGN ENGINEER shall indemnify and hold harmless the CITY from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the DESIGN ENGINEER and other persons employed or utilized by the design professional in the performance of the contract.

9.2 INSURANCE

The DESIGN ENGINEER will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the DESIGN ENGINEER's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 WORKERS' COMPENSATION

The DESIGN ENGINEER will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers'

Compensation and \$100,000 for Employers' Liability.

9.2.2 COMPREHENSIVE GENERAL LIABILITY

The DESIGN ENGINEER will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 COMPREHENSIVE AUTOMOBILE LIABILITY

The DESIGN ENGINEER will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 PROFESSIONAL LIABILITY INSURANCE

Annual Professional Liability Insurance will be maintained with coverage in the amount of \$1,000,000 that protects the DESIGN ENGINEER.

Said Professional Liability Insurance shall provide for all sums which the DESIGN ENGINEER shall be obligated to pay as damages for claims arising out of the service performed by the DESIGN ENGINEER, or any person or subconsultant employed by the DESIGN ENGINEER, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the DESIGN ENGINEER under the scope of this Agreement including any amendment thereto.

9.2.5 The DESIGN ENGINEER shall furnish Certificates of Insurance forwarded directly to the following:

Mrs. Natrevia Gradney - Mitchell
Director of Public Works & Engineering
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated Representative identified in Section 6.2. The certificates shall clearly indicate that the DESIGN ENGINEER has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The DESIGN ENGINEER hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the DESIGN ENGINEER's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the DESIGN ENGINEER's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the DESIGN ENGINEER in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the DESIGN ENGINEER. The DESIGN ENGINEER may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the DESIGN ENGINEER pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the DESIGN ENGINEER for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the DESIGN ENGINEER; and the CITY shall indemnify and hold harmless the DESIGN ENGINEER from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the DESIGN ENGINEER will entitle the DESIGN ENGINEER to further compensation at rates to be agreed upon by the CITY and the DESIGN ENGINEER.

Any documents given to or prepared or assembled by the DESIGN ENGINEER and its subconsultants under this Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The DESIGN ENGINEER may maintain copies of all work performed under this Agreement for the CITY.

The DESIGN ENGINEER shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

- 12.1 The DESIGN ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the DESIGN ENGINEER, to solicit or secure this Agreement and that the DESIGN ENGINEER has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the DESIGN ENGINEER any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making of this Agreement.
- 12.2 The DESIGN ENGINEER shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- 12.3 The DESIGN ENGINEER hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the DESIGN ENGINEER, or any interest in property which the DESIGN ENGINEER may have. The DESIGN ENGINEER further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the DESIGN ENGINEER to remove any employee or representative of the DESIGN ENGINEER from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the DESIGN ENGINEER in writing of the CITY's objections prior to the DESIGN ENGINEER's removal of any employee or representative.

- 12.5 The DESIGN ENGINEER shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT

- 13.1 The DESIGN ENGINEER shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The DESIGN ENGINEER shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the DESIGN ENGINEER's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The DESIGN ENGINEER shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been exercised under Section 8.0 herein.

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the DESIGN ENGINEER shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement. Additionally, The DESIGN ENGINEER shall perform its services in accordance with the professional standard of care. The standard of care applicable to DESIGN ENGINEER's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the DESIGN ENGINEER's performance of services, and it is agreed that the DESIGN ENGINEER is not a fiduciary with respect to the CITY.
- 14.2 The DESIGN ENGINEER shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the DESIGN ENGINEER beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The DESIGN ENGINEER shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the DESIGN ENGINEER from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any

act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE -

18.1 The DESIGN ENGINEER agrees to perform its services as expeditiously as is consistent with the project schedule.

SECTION 19. EXTENT OF AGREEMENT

19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the DESIGN ENGINEER and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.

19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - ADDENDUM FORM

EXHIBIT C - HOURLY RATES SCHEDULE

EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES

EXHIBIT E - PROJECT STAFFING CHART

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES

20.1 CLAIMS AND DISPUTES

Any claims, disputes, and/or matters in question between the parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the DESIGN ENGINEER arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 WAIVER OF JURY TRIAL; ATTORNEY'S FEES

It is mutually agreed by and between City and Owner that each of the parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings.

20.4 FLORIDA STATUTE 558.0035

PURSUANT TO FS 558.0035, EMPLOYEES OF DESIGN ENGINEER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

(Signature page to follow)

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

KIMLEY-HORN AND ASSOCIATES, INC.

By: Lindsey A. Tercilla, Esq.

Nicole Hech

Title: In-House Counsel

Project Manager

Date: 06/22/2021

06/22/2021

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021,
by _____, as _____ of _____, Inc. a Florida corporation, who is
personally known to me or has produced identification.

Notary Seal:

Notary: _____

Print Name: _____

My Commission Expires: _____

CITY OF KISSIMMEE

Olga Gonzalez
Olga Gonzalez, Mayor-Commissioner

Attest

Linda Hansell
Linda Hansell, City Clerk

Approved as to form and legality

Olga Sanchez Fuentes
City Attorney

IN WITNESS WHEREOF, the CITY and the DESIGN ENGINEER have executed this Agreement to become effective on the day and year first written above.

KIMLEY-HORN AND ASSOCIATES, INC.

By: L. Tercilla, Esq. *Nicole Hech*

Title: In-House Counsel Project Manager

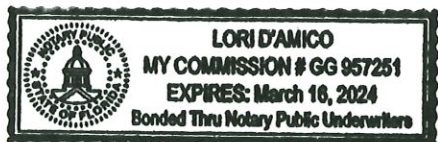
Date: 7/9/21 07/09/21

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 9 day of July, 2021, by Lindsey Tercilla as In-House Counsel of Kimley-Horn and Associates, Inc. a Florida corporation, who is personally known to me or has produced identification. *means of + physical presence* *North Carolina*

Notary Seal: Lori D'Amico

Print Name: Lori D'Amico
My Commission Expires: March 16, 2024



CITY OF KISSIMMEE

Olga Gonzalez, Mayor-Commissioner

Attest

Linda Hansell, City Clerk

Approved as to form and legality

City Attorney

EXHIBIT A

SCOPE OF SERVICES

Under this continuing services contract the DESIGN ENGINEER will provide a range of professional engineering services including, but not limited to, the design of roadways, pedestrian and bicycle paths, intersections and drainage projects as well as signalization design, traffic engineering studies, permitting and construction inspection/administration. The work performed may include engineering studies, permit applications, cost estimates, the preparation of complete construction documents, including surveying, permitting and shop drawing review. The DESIGN ENGINEER will be issued Work Orders with a description of the work to be performed as well as a listing of the deliverables the DESIGN ENGINEER will provide the CITY. Based on this Work Order, as well as scoping meetings and negotiations, the DESIGN ENGINEER will provide a price proposal to the CITY for price negotiation. The price proposal shall be submitted in a format specified by the CITY.

The initial contract period for the Continuing Services Contract will be two (2) years with three (3) optional one-year extensions.

EXHIBIT B

CITY OF KISSIMMEE CITY COMMISSION WORK ORDER/ADDENDUM	Work Order/ ADDENDUM #:
DATE:	AMENDMENT:
Per the terms, conditions, and specifications of the City of Kissimmee continuing services agreement with _____ _____ the following described work order/change(s) are agreed to and are hereby accepted and incorporated:	
DESCRIPTION OF ASSIGNMENT:	
FORM OF COMPLETED DELIVERABLES:	
BASIS OF PAYMENT: Services shall be made on the basis of _____ (method of compensation) method in accordance with the Work Order/Agreement, the total not to exceed \$ _____ without further authorization from the City of Kissimmee.	
ESTIMATED DATE OF COMPLETION: This assignment shall be completed within _____ calendar days from the receipt of this fully executed Addendum.	
Previous Contract Total Dollars:	\$
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	☐ +
NET CONTRACT TOTAL DOLLARS:	\$

Accepted By: _____ (signature)	Requested By: _____ (signature)
Title/Position: _____	Approved By: _____ (signature)
PW Director: _____ (signature)	City Commission Approval Date: _____
Approved as to Form and Legality: _____ (signature)	

EXHIBIT C
HOURLY RATE SCHEDULE

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The DESIGN ENGINEER shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the DESIGN ENGINEER.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

Kimley-Horn and Associates, Inc.

Hourly Rate Schedule

Classification	<i>Rate</i>
Principal-in-Charge	\$280.00
Senior Engineer	\$255.00
Senior Planner	\$225.00
Chief Landscape Architect	\$240.00
Senior Landscape Architect	\$165.00
Professional	\$160.00
Analyst	\$125.00
Senior CADD Operator	\$145.00
Secretary/Clerical	\$90.00

ITEM 7.0

Award Construction Engineering & Inspection Services for the Harbin Parking Modification Project to DRMP, Inc.

Request

Approval to award the Construction Engineering & Inspection (CEI) services contract for the Harbin Parking Modification Project to DRMP, Inc. in the amount of \$89,388.00

Explanation

In 2019 as a result of the West Oak Street intersection widening project and eminent domain proceedings, the City acquired the property located at 1021 W. Oak Street. In the settlement agreement the tenants waived claims against the City in exchange for the City agreeing to construct a parking cure prior to the road widening so that the tenants would not lose parking during the construction of West Oak Street.

In an effort to ensure the City's capital improvement projects are constructed in line with the approved construction documents, the City desires to award CEI services to one of its continuing services contract consultants. This will ensure proper documentation throughout the duration of the project and assist with minimizing change order requests.

The City has selected DRMP, Inc. as the CEI consultant at a cost of \$89,388.00

By recommendation of the Florida Department of Transportation, DRMP will be providing the following material testing scope of work for this project:

- In-place density testing of drainage trench backfill and sidewalk subbase
- Concrete testing of sidewalk
- Observation and sampling of asphalt placement and pavement thickness

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10345656 506393	GT2312		\$500,000.00	\$89,388.00

Financial Summary:

Adequate funds are available in the Gas Tax Fund for the CEI services associated with this project.

Recommendation

Staff recommends approval of the contract with DRMP, Inc. in the amount of \$89,388.00 to provide CEI Services on the Harbin Parking Modification project.

REQUESTED CITY COMMISSION ACTION:

City of Kissimmee

Approve

Department: Public Works & Engineering

Presenter: Mike Steigerwald

Attachment(s):

1. CEI Proposal (Harbin Parking Modification project)
2. (2022) DRMP, Inc. - Continuing Professional Surveying Services Agreement
3. (S) DRMP WO # 1 – Harbin Parking Modification project

PRINCIPALS

Lawrence L. Smith, Jr.
Wayne D. Chalifoux
Donaldson K. Barton, Jr.
Glenn J. Lusink
Jon S. Meadows
Mark D. Prochak
Mark E. Puckett



December 8, 2022

Victor Aponte
Construction Manager
City of Kissimmee
101 Church Street
Kissimmee, FL 34741

**Subject: CEI Services Fee/Manhour Proposal
City of Kissimmee Harbin Parking Modifications project
TWO 01 – Continuing Services Contract
Project No.:**

Mr. Masiku,

DRMP, Inc. is providing this fee proposal for CEI Services for the Harbin Parking Modifications project. CEI Services are to be provided in accordance with the FDOT Standard Specifications for Road and Bridge Construction and the FDOT Standard Plans for Road and Bridge Construction.

Included herein, please find our fee proposal to complete CEI services for this project. The typical duties and responsibilities of CEI are shown on the next page. The anticipated tasks are not limited and are for informational purposes only.

If you have any further questions or need any clarification of the enclosed information, please contact me at (407) 362-1285.

Sincerely,
DRMP, Inc.

A handwritten signature in blue ink, appearing to read "Ryan D. Pellarin", is written over a light blue circular stamp.

Ryan D. Pellarin, PE, CCM
Senior Project Engineer

OFFICES

Boca Raton, Florida
Cary, North Carolina
Charlotte, North Carolina
Chipley, Florida
Fort Myers, Florida
Gainesville, Florida
Jacksonville, Florida
Lakeland, Florida
Melbourne, Florida
Mooresville, North Carolina
Orlando, Florida
Panama City, Florida
Pensacola, Florida
Stockbridge, Georgia
Tallahassee, Florida
Tampa, Florida

City of Kissimmee CSC - TWO 01 - Harbin Parking Modifications
CEI SERVICES MANPOWER CHART

FPID: N/A
Bid No.
Local Agency: City of Kissimmee
Project Description: Harbin Parking Modifications
Construction Duration: 150 Days

CEI Personnel	Month							TOTAL		Loaded Rate	Cost
	Pre-Const	1	2	3	4	5	Post-Const	Months	Man-hours		
Project Administrator	0.10	0.20	0.20	0.20	0.20	0.20	0.10	1.20	198.00	\$ 170.00	\$ 33,660.00
Inspector				0.10	0.10			0.20	33.00	\$ 76.00	\$ 2,508.00
Senior Inspector		0.50	0.50	1.00	0.50	0.50		3.00	495.00	\$ 106.00	\$ 52,470.00
Laboratory Materials Testing									-	\$ -	\$ 750.00
Total									726.00		\$ 89,388.00

Task No.	CEI Task/Scope of Services
1	Preconstruction Conference- Invite all appropriate agencies; Administer preconstruction meeting; Prepare agendas; Prepare and distribute meeting minutes; Preconstruction photos and videos
2	Preconstruction Activities- Prepare field books; Prepare quantity spreadsheets; Prepare DWR template; Contractor QC Review and Approval
3	Schedule Review- Review the logic and relationships of each work activity; Review start and finish dates for each activity; Review project float duration; Review production rates of each work activity for accuracy
4	Onsite Inspection Services- Part time Inspection coverage; Ensure project is constructed in accordance with Contract documents; Perform materials testing; Inspect environmental compliance
5	Project Management/Contract Administration - Cost Control; Resolve constructability issues; Coordination with applicable business owners/utility owners; Pre-Operation Meetings
6	Progress Meetings- Invite attendees; Prepare agenda; Prepare and distribute meeting minutes; Resolve Contractor/project issues
7	Project Submittals- Review RFIs and make recommendations; Review Shop Drawing and Material submittals
8	Monthly Pay Estimate Review - Review/verify quantity of installed pay items
9	Final Project Acceptance/Project Closeout- Develop punch list; Administer preliminary and final project Walk-Through Meetings; Prepare and submit final project records; Review/verify As-Built Plans

**AGREEMENT BETWEEN CITY OF KISSIMMEE
AND DRMP, Inc
FOR CONTINUING PROFESSIONAL SURVEYING SERVICES**

THIS AGREEMENT is made and entered into this **15 day of April, 2022** by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address 101 Church St. Kissimmee, Florida 34741, hereinafter referred to as the "**CITY**" and **DRMP, Inc** whose address is **941 Lake Baldwin Lane Orlando, FL 32814**, hereinafter "**SURVEYOR**" and each represent as follows:

WITNESSETH

WHEREAS, it is in the best interest of **CITY** to retain competent and qualified firms to provide future professional on-going surveying services hereinafter referred to as "**ASSIGNMENT**"; and

WHEREAS, the **CITY** advertised RFQ 2022-003, titled "Continuing Contract for Surveying Services" and firms submitted statement of qualifications which were reviewed, evaluated and scored by the Selection Committee based on several factors including quality of product, compliance with specifications, reputation; and

WHEREAS, based on the competitive selection process the **CITY** has determined that **DRMP, Inc** is qualified to provide the services and desires to award a continuing services contract to **SURVEYOR** consistent with the terms, conditions and requirements of the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the Parties hereto as follows:

SECTION 1. GENERAL

- 1.1 The **SURVEYOR** shall be defined herein to include all principals of the firm of including full time employees, professional or otherwise, and all other servants, agents, employees and/or subconsultants retained by the **SURVEYOR**, to perform its obligations hereunder.
- 1.2 Prior to the start of any work under this Agreement, the **SURVEYOR** has submitted to the **CITY** detailed resumes of key engineering personnel that will be involved in performing services described in the Assignment. The **CITY** hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the **SURVEYOR** desires to change the key personnel in an active assignment, it shall submit the qualifications of the new engineering personnel to the **CITY** for prior approval. Key personnel shall include principals-in-charge, project managers, and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform services under this Agreement for durations of one (1) week or less.
 - 1.2.1 Key personnel involved in performing services described in the assignment are as indicated in Exhibit "E".
- 1.3 The **SURVEYOR** acknowledges that the **CITY** has retained other **SURVEYORs** and that coordination between said **SURVEYORs** and the **SURVEYOR** may be necessary from time to time for the successful completion of the Assignments. The **SURVEYOR** agrees to provide such coordination as necessary within the Scope of Services contained in Exhibit "A".
- 1.4 The **SURVEYOR** will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement to achieve acceptable and timely completion of the Assignment.
- 1.5 Requirements for sealing all plans, reports and documents prepared by the **SURVEYOR** shall be

governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.

- 1.6 This Assignment is for professional engineering services related to the CITY. The CITY and SURVEYOR mutually acknowledge that this Assignment will be phased over an extended period of time and that aspects of the Assignment(s) cannot be defined sufficiently at the time of execution of this Agreement. It is therefore anticipated that separate authorizations will be required of the SURVEYOR during this Assignment.
- 1.7 The term of this Agreement will be from the latest date of execution by the Parties for a period of three (3) years with two (2) optional one (1) year extensions.

SECTION 2. SCOPE OF SERVICES

The SURVEYOR shall diligently and in a professional and timely manner perform the work included in the Assignment(s). Unless modified in writing by the Parties hereto, duties of the SURVEYOR shall not be construed to exceed those services specifically set forth herein.

2.1 GENERAL

The SURVEYOR agrees to perform those services described in Exhibit "A" which is attached hereto and made a part hereof. Services to be provided by the SURVEYOR shall be authorized in writing as Addenda in accordance with Section 2.3. Services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, an Addendum may be negotiated between the CITY and the SURVEYOR describing the services desired and providing a basis for compensation to the SURVEYOR.

2.2 SPECIAL SURVEYING SERVICES

The CITY and the SURVEYOR agree that there may be certain additional services required to be performed by the SURVEYOR during the performance of the Assignment that cannot be defined sufficiently at the time of execution of this Agreement. Such services shall be authorized in writing as Addenda in accordance with Section 2.3, and shall be undertaken only under terms of formal amendments to this Agreement.

2.3 ADDENDA

Services to be provided by the SURVEYOR, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Addenda. Addenda to be provided shall be prepared on the form delineated as Exhibit "B" (Addendum Forms), which is attached hereto and made a part hereof. Each Addendum shall include: a detailed description of the work to be performed; a schedule of completion for the work authorized; and the amount and method of compensation. Addenda shall be dated and serially numbered. The Addenda may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement.

SECTION 3. CITY'S RIGHT AND RESPONSIBILITIES

The CITY shall provide the services described below in a timely fashion at no cost to the SURVEYOR:

- 3.1 Furnish the SURVEYOR with existing data, records, maps, plans specifications, reports, fiscal data, and other engineering information that is available in the Department of Public Works & Engineering files necessary or useful to the SURVEYOR for the performance of the Assignment. All of such documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the Assignment to be performed by the SURVEYOR.

- 3.2 Make CITY personnel available where required and necessary to assist the SURVEYOR. The availability and necessity of said personnel to assist the SURVEYOR shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the SURVEYOR to enter upon public lands and assist the SURVEYOR in gaining access to private lands as required for the SURVEYOR within a reasonable time, to perform surveys, observations, and other work as necessary to complete the Assignment.
- 3.4 Examine all reports, sketches, drawings, cost opinion proposals, and other documents presented by the SURVEYOR and render decisions, in writing, indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the SURVEYOR.
- 3.5 Transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
- 3.6 Give prompt written notice to the SURVEYOR whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope or timing of the SURVEYOR's services, or become aware of any issue or changes necessary to the work of the SURVEYOR.
- 3.7 Following the SURVEYOR's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the Assignment not covered under the engineering Assignment.

SECTION 4. PAYMENT and BASIS OF COMPENSATION

- 4.1 **GENERAL** - CITY shall pay SURVEYOR for engineering services in one of two forms:
 - A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and SURVEYOR, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
 - B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the SURVEYOR responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time.
- 4.2 **REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to compensation for professional services and include expenses incurred by the SURVEYOR and SURVEYOR'S employees as follows:
 - A. Expenses of reproductions, postage and handling of materials and documents as required.
 - B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, rental car and per diem (inclusive of meals and hotel).

- C. Direct costs associated with the SURVEYOR engaging services for specialized studies and data collection, if required to complete the Scope of Services and if authorized in advance by the CITY.

4.3 INVOICE PROCESSING

Payments on account of the SURVEYOR'S services and for reimbursable expenses shall be made monthly upon presentation of the SURVEYOR'S statement of services rendered or expenses incurred. Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations. Records of Reimbursable Expenses and expenses pertaining to services performed shall be available to the CITY or the CITY'S authorized representative at mutually convenient times.

Invoices received by the CITY will be processed for payment within thirty (30) days of receipt by the CITY. The SURVEYOR will be notified of any questionable items contained in invoices submitted by the SURVEYOR within fifteen (15) days of receipt by the CITY with an explanation of the deficiencies. The CITY will make every effort to resolve all questionable items contained in the SURVEYOR'S invoices within thirty (30) days of receipt of the invoices by the CITY. In no instance shall payment be due in less than thirty (30) days.

At the end of the thirty (30) day period, the CITY shall pay the SURVEYOR the invoice amount less any unresolved questionable items.

Invoices are to be forwarded directly to the following:

Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
Public Works & Engineering Department
City of Kissimmee
101 N. Church Street
Kissimmee, Florida 34741

The CITY agrees that unpaid monthly invoices less any unresolved questionable items shall accrue interest based on the rate of 10 percent (10%) per annum, after they have been outstanding/unpaid for thirty (30) days after date of invoice. If the SURVEYOR employs legal services to collect overdue amounts, the CITY agrees to pay all costs of collection, including reasonable attorney's fees, whether action be brought or not.

4.4 PAYMENT IN THE EVENT OF AGREEMENT TERMINATION OR SUSPENSION

In the event that an Addendum of this Agreement is terminated or canceled, or the SURVEYOR'S services are suspended on an Addendum of this Agreement, prior to completion, payment shall be made in accordance with the provisions of Section 8.0.

4.5 ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT

If instructed to do so by the CITY, the SURVEYOR shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the SURVEYOR, the SURVEYOR may be entitled to additional compensation. The additional compensation shall be requested by the SURVEYOR on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the Assignment by formal amendment or Addendum to this Agreement.

SECTION 5. WORK COMMENCEMENT and SCHEDULE

5.1 WORK COMMENCEMENT

The SURVEYOR will begin work promptly after receipt of a fully executed copy of each work order and related Addenda; such receipt shall constitute written notice to proceed.

5.2 IMPLEMENTATION SCHEDULE

The SURVEYOR and the CITY agree to make every effort to adhere to the schedule established for the various Addenda described in the Assignment.

In the event the work of the SURVEYOR is delayed due to no fault of the SURVEYOR, which delays the completion of any Addendum of the Assignment, the SURVEYOR shall be entitled to an appropriate extension of the Agreement time for the specific Addendum.

Additional compensation to the SURVEYOR will be negotiated to the mutual agreement of the CITY and the SURVEYOR in the event such delay causes any Addendum's costs to increase for reasons beyond the SURVEYOR's control

5.3 TIME FOR COMPLETION

The provisions of this Agreement and the various rates of compensation for SURVEYOR's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Assignment. ENGINEER's obligation to render services hereunder will extend for a period which may be reasonably required to complete the Assignment. If the services under individual work order continue for a period of more than one (1) year from the beginning date (as above provided), the rates, measures, and amounts of compensation provided herein shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

SECTION 6. DESIGNATED REPRESENTATIVES

6.1 GENERAL

The CITY designates the Director of the Public Works & Engineering Department, or her designated representative, to represent the CITY in all matters pertaining to and arising from the work and performance of this Agreement. The Director of the Public Works & Engineering Department, or her designated representative, shall have the following responsibilities:

- 6.1.1 Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the SURVEYOR and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the SURVEYOR;
- 6.1.2 Transmission of instructions, receipt of information, and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Agreement;
- 6.1.3 Giving prompt written notice to the SURVEYOR whenever the CITY observes, or otherwise becomes aware of any defects or changes necessary in the project; and
- 6.1.4 Following the SURVEYOR's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

6.2 DESIGNATED REPRESENTATIVES

Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the Parties address below:

CITY OF KISSIMMEE:

Mr. Ashley Willis, P.E.
Assistant Director of Public Works & Engineering/City Engineer
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

SURVEYOR:

SECTION 7. CHANGES IN SCOPE

The CITY or the SURVEYOR may request changes in the Scope of Services of an Addendum. Such change, including any increase or decrease in the amount of SURVEYOR's compensation for any Addendum pursuant to Section 4.0 - Compensation, which are mutually agreed upon by and between the CITY and the SURVEYOR, shall be incorporated by formal amendment to the Addendum.

SECTION 8. TERMINATION/SUSPENSION OF AGREEMENT

8.1 TERMINATION BY CITY FOR CAUSE

The CITY may terminate this Agreement for any one or more of the reasons as follows:

- 8.1.1 If adequate progress on any phase of the Assignment is not being made by the SURVEYOR as a direct result of the SURVEYOR's failure to perform; or
- 8.1.2 The quality of the services performed by the SURVEYOR is not in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Agreement, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment; or
- 8.1.3 The SURVEYOR or any employee or agent of the SURVEYOR is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the SURVEYOR, or
- 8.1.4 The SURVEYOR becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- 8.1.5 The SURVEYOR violates the Standards of Conduct provisions in Section 12.0 herein.
- 8.1.6 In the event of any of the causes described in Section 8.1, the CITY's Designated Representative may send a certified letter to the SURVEYOR requesting that the SURVEYOR show cause why the Agreement should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the SURVEYOR of said show cause notice, the CITY may consider the SURVEYOR to be in default, and may immediately terminate this Agreement.

8.2 TERMINATION BY SURVEYOR FOR CAUSE

The SURVEYOR may cancel this Agreement if:

- 8.2.1 The CITY fails to meet its obligation and responsibilities as contained in Section 3.0 - City's Rights and Responsibilities; or

8.2.2 The CITY fails to pay the SURVEYOR in accordance with Section 4.0 - Compensation.

8.2.3 In the event of either of the causes described in Section 8.2, the SURVEYOR may send a certified letter requesting that the CITY show cause why the Agreement should not be terminated. If adequate assurances are not given to the SURVEYOR within fifteen (15) days of the receipt by the CITY of said show cause notice, then the SURVEYOR may consider the CITY to be in default, and may immediately terminate this Agreement.

8.3 **TERMINATION BY CITY WITHOUT CAUSE**

Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirety without cause, or terminate by specific Agreement without cause, provided that thirty (30) days prior written notice is given to the SURVEYOR of the CITY's intent to terminate. In the event that an Assignment(s) is terminated, the CITY shall identify the specific Addendum(s) being terminated and the specific Addendum(s) to be continued to completion pursuant to the provisions of this Agreement. This Agreement will remain in full force and effect as to all authorized Addenda which are to be continued to completion under this type of arrangement.

8.4 **PAYMENT IN THE EVENT OF TERMINATION**

In the event this Agreement or any Assignment is terminated or canceled prior to final completion, payment for the unpaid portion of the services provided by the SURVEYOR to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the SURVEYOR. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional costs to be incurred by the CITY due to such default.

8.5 **ACTION FOLLOWING TERMINATION**

8.5.1 Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.

8.5.2 In the case of the CITY terminating the SURVEYOR, the SURVEYOR shall within ten (10) days, or any extensions thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans, specifications and other data and documents that have been obtained or prepared by the SURVEYOR in performing the services under this Agreement, regardless of whether the work on such documents has been completed or is in progress.

8.6 **SUSPENSION**

8.6.1 The performance of the SURVEYOR's service under any provision of this Agreement may be suspended by the CITY at any time. In the event the CITY suspends the performance of the SURVEYOR's services hereunder, the CITY shall so notify the SURVEYOR in writing, such suspension becoming effective upon the date of its receipt by the SURVEYOR, and the CITY shall promptly pay to the SURVEYOR all fees which have become due and payable to the SURVEYOR to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the SURVEYOR for the suspended services unless and until the CITY notifies the SURVEYOR that the services of the SURVEYOR called for hereunder are to be resumed.

Upon receipt of written notice from the CITY that the SURVEYOR's services hereunder are to be resumed, the SURVEYOR shall complete the services of the SURVEYOR called for in this Agreement and the SURVEYOR shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the SURVEYOR under this Agreement, same to be payable at the times and in the number specified herein.

In no event will the compensation or any part thereof become due or payable to the SURVEYOR under this Agreement unless and until the SURVEYOR has attained that state of work where the same would be due and payable to the SURVEYOR under the provisions of this Agreement.

- 8.6.2 If the aggregate time of the CITY's suspension or suspensions of the SURVEYOR's services under any Addendum of this Agreement exceeds sixty (60) days, then the SURVEYOR and the CITY shall, upon request of the SURVEYOR, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed, and the total compensation paid to the SURVEYOR hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the SURVEYOR for the balance of the services to be performed hereunder. No increase in compensation to the SURVEYOR shall be allowed unless it is based upon clear and convincing evidence of an increase in the SURVEYOR's costs attributable to the aforesaid suspensions.

SECTION 9. INDEMNITY AND INSURANCE

9.1 GENERAL

Pursuant to Section 725.08(1), F.S. the design professional shall indemnify and hold harmless the City from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the Agreement.

9.2 INSURANCE

The SURVEYOR will obtain or possess and continuously maintain the following insurance coverage from a company or companies authorized to do business in the State of Florida, and will provide Certificates of Insurance to the CITY, evidencing such insurance, within fifteen (15) days following the SURVEYOR's receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty(30) days prior notice will be given to the CITY.

9.2.1 WORKERS' COMPENSATION

The SURVEYOR will provide Workers' Compensation for all his employees at the site location and, in case any work is subcontracted, will require the Subconsultant to provide the Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employers' Liability.

9.2.2 COMPREHENSIVE GENERAL LIABILITY

The SURVEYOR will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will be not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.3 COMPREHENSIVE AUTOMOBILE LIABILITY

The SURVEYOR will provide coverage for all Company- owned and non-owned vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) or its equivalent.

9.2.4 PROFESSIONAL LIABILITY INSURANCE

Annual Professional Liability Insurance will be maintained with coverage in the amount of

\$1,000,000 that protects the SURVEYOR.

Said Professional Liability Insurance shall provide for all sums which the SURVEYOR shall be obligated to pay as damages for claims arising out of the service performed by the SURVEYOR, or any person or subconsultant employed by the SURVEYOR, in conjunction with this Agreement. This insurance shall also be maintained for a minimum of one (1) year after completion of any related construction and acceptance of the facilities designed by the SURVEYOR under the scope of this Agreement including any amendment thereto.

9.2.5 The SURVEYOR shall furnish Certificates of Insurance forwarded directly to the following:

Mrs. Natrevia Gradney - Mitchell
Director of Public Works & Engineering
City of Kissimmee
Department of Public Works & Engineering
101 N. Church Street
Kissimmee, Florida 34741

with information copy to the CITY's Purchasing Department and the Designated Representative identified in Section 6.2. The certificates shall clearly indicate that the SURVEYOR has obtained insurance of the type, amount and classification required by these provisions.

SECTION 10. NEGOTIATION DATA

The SURVEYOR hereby certifies, covenants and warrants that wage rates and other cost data supporting the compensation provided for in this Agreement are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Agreement. It is further agreed that the SURVEYOR's compensation under this Agreement may be adjusted to exclude any significant sums where the CITY determines the SURVEYOR's compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Agreement. Records of cost incurred under the terms of this Agreement shall be maintained and made available to the CITY during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Agreement shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 11. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all Documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the SURVEYOR in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the SURVEYOR. The SURVEYOR may retain reproducible copies of all Documents for its files at its cost. All Documents, including drawings prepared by the SURVEYOR pursuant to this Agreement, are instruments of service in respect to the services described in the Assignment. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of the services performed under this Agreement or on any other project.

Any reuse without written verification or adaptation by the SURVEYOR for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the SURVEYOR; and the CITY shall indemnify and hold harmless the SURVEYOR from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the SURVEYOR will entitle the SURVEYOR to further compensation at rates to be agreed upon by the CITY and the SURVEYOR.

Any documents given to or prepared or assembled by the SURVEYOR and its subconsultants under this

Agreement shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.

The SURVEYOR may maintain copies of all work performed under this Agreement for the CITY.

The SURVEYOR shall not publish any information concerning this project without the written consent of the CITY.

SECTION 12. STANDARDS OF CONDUCT

- 12.1 The SURVEYOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the SURVEYOR, to solicit or secure this Agreement and that the SURVEYOR has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the SURVEYOR any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making of this Agreement.
- 12.2 The SURVEYOR shall comply with all Federal, State and local laws and ordinances in effect on the date of this Agreement and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- 12.3 The SURVEYOR hereby certifies that no undisclosed conflict of interest exists with respect to the present Agreement, including any conflicts that may be due to representation of other clients, other contractual relationships of the SURVEYOR, or any interest in property which the SURVEYOR may have. The SURVEYOR further certifies that any apparent conflict of interest that arises during the term of this Agreement will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as justification for immediate termination of this Agreement under the provisions of Section 8.1.
- 12.4 The CITY is empowered to require the SURVEYOR to remove any employee or representative of the SURVEYOR from working on this Agreement which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the SURVEYOR in writing of the CITY's objections prior to the SURVEYOR's removal of any employee or representative.
- 12.5 The SURVEYOR shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 13. ACCESS TO RECORDS/AUDIT/PUBLIC RECORDS

- 13.1 The SURVEYOR shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles. The SURVEYOR shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Agreement. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the SURVEYOR's books, records, documents, time records and cost accounts, and other evidence shall be at the CITY's expense.
- 13.2 The SURVEYOR shall maintain and allow access to the records required under this Section for a period of three (3) years after the completion of the services provided under this Agreement and date of final payment for said services, or date of termination of this Agreement as may have been

exercised under Section 8.0 herein.

- 13.3 SURVEYOR 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, SURVEYOR shall keep and maintain public records required by the CITY to perform the service.
- a. **If SURVEYOR has questions regarding the application of Chapter 119, Florida Statutes, to SURVEYOR'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.**
 - b. If CITY's Custodian of Records requests records from SURVEYOR, SURVEYOR 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.
 - c. SURVEYOR 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 SURVEYOR does not transfer the records to CITY.
 - d. Upon completion of the contract, SURVEYOR shall transfer, at no cost, to CITY all public records in possession of SURVEYOR or keep and maintain public records required by CITY to perform the service. If SURVEYOR transfers all public records to CITY upon completion of the Agreement, SURVEYOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SURVEYOR keeps and maintains public records upon completion of the Agreement, SURVEYOR 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.
 - e. Upon notice to SURVEYOR of a request to inspect or copy public records relating to CITY's agreement for services, SURVEYOR shall provide the records to CITY or allow the records to be inspected or copied within a reasonable time.
 - f. If SURVEYOR 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.
 - g. If the SURVEYOR fails to provide the public records to CITY within a reasonable time may be subject to penalties under Florida Statutes §119.1

SECTION 14. CODES AND DESIGN STANDARDS

- 14.1 All the services to be performed by the SURVEYOR shall in the minimum be in conformance with commonly accepted design codes and standards, standards of the CITY, and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Agreement. Additionally,

The SURVEYOR shall perform its services in accordance with the professional standard of care. The standard of care applicable to SURVEYOR's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the SURVEYOR's performance of services, and it is agreed that the SURVEYOR is not a fiduciary with respect to the CITY.

- 14.2 The SURVEYOR shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Agreement. Any new codes or requirements becoming effective subsequent to the effective date of this Agreement that require an additional level of effort to be performed by the SURVEYOR beyond that covered under the scope of this Agreement shall be subject to negotiation for an increase in scope and compensation by formal amendment to this Agreement.

SECTION 15. ASSIGNABILITY

The SURVEYOR shall not sublet, assign or transfer any interest in this Agreement, without prior written approval of the CITY, provided that claims for the money due or to become due the SURVEYOR from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 16. CONTROLLING LAWS

This Agreement is to be governed by the laws of the State of Florida.

SECTION 17. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include but not be limited to hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 18. TIME IS OF THE ESSENCE

- 18.1 The SURVEYOR agrees to perform its services as expeditiously as is consistent with the project schedule.

SECTION 19. EXTENT OF AGREEMENT

- 19.1 This Agreement, together with the Exhibits hereinafter identified and listed in Section 19.2, constitute the entire Agreement between the CITY and the SURVEYOR and supersede all prior written or oral understandings in connection therewith. This Agreement may only be amended, supplemented or modified by a formal amendment or Addendum to this Agreement.
- 19.2 The Exhibits supplemented to and made a part of this Agreement are as follows:
- EXHIBIT A - SCOPE OF SERVICES
 - EXHIBIT B - WORK ORDER FORM
 - EXHIBIT C - HOURLY RATES SCHEDULE
 - EXHIBIT D - TRAVEL AND SUBSISTENCE POLICY AND ALLOWANCES
 - EXHIBIT E - KEY PERSONNEL

SECTION 20. DISPUTES, REMEDIES, AND ATTORNEY FEES

- 20.1 CLAIMS AND DISPUTES

Any claims, disputes, and/or matters in question between the Parties arising out of or relating to this Agreement, including claims for extra compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees to not make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the Parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the "Remedies" provisions of Section 20.2 herein.

20.2 REMEDIES

Except as provided in Section 20.1 herein, all claims, disputes and/or matters in question between the CITY and the SURVEYOR arising out of or relating to this Agreement, or the breach of it will be decided in a court of competent jurisdiction within the Circuit Court of Osceola County.

20.3 WAIVER OF JURY TRIAL; ATTORNEY'S FEES

It is mutually agreed by and between City and Owner that each of the Parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the Parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings.

20.4 FLORIDA STATUTE 558.0035

PURSUANT TO F.S. § 558.0035, EMPLOYEES OF SURVEYOR MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

SECTION 21. E-VERIFY

21.1 In compliance with Section 448.095, Fla. Stat., SURVEYOR 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. SURVEYOR shall require each of its subcontractors to provide SURVEYOR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. SURVEYOR shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.
- b. CITY, SURVEYOR, 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 SURVEYOR otherwise complied, shall promptly notify SURVEYOR and SURVEYOR 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 448.09(2)(d), Fla. Stat. SURVEYOR acknowledges that upon termination of this Agreement by the City for a violation of this section by SURVEYOR, SURVEYOR may not be awarded a public contract for at least one (1) year. SURVEYOR further acknowledges that SURVEYOR 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.* SURVEYOR 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. SURVEYOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Signature page to follow

IN WITNESS WHEREOF, the CITY and the SURVEYOR have executed this Agreement to become effective on the day and year first written above.

By: [Signature]

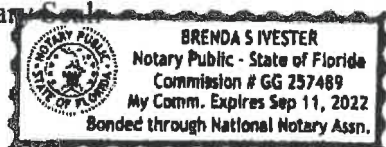
Title: SURVEY MANAGER

Date: 04/19/2022

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 19 day of APRIL, 2022, by means of ☒ physical presence or ☐ online notarization, by FRANK LOPEZ as SURVEY MANAGER for SRMP, INC., a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: Brenda S. Ivester
Print Name: BRENDA S. IVESTER
My Commission Expires: 9/11/2022

CITY OF KISSIMMEE

Date: 5/17/2022

ATTEST:

Linda S. Hansell
Linda Hansell, City Clerk

By: Olga Gonzalez
Olga Gonzalez, Mayor-Commissioner

Approved as to form a legal sufficiency:

[Signature]
City Attorney

EXHIBIT A SCOPE OF SERVICES

Under this continuing services agreement the SURVEYOR will provide a range of professional services of road, sanitary sewer, water line and drainage projects. The services required include, but are not limited to, right-of-way surveys, utility location, topographic and boundary surveys, as well as construction staking. The services preferred include GPS, GPR, GIS, LIDAR, and aerial photography. The work will be performed for the Public Works & Engineering Department.

EXHIBIT B
WORK ORDER FORM



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:

Requested By:

(Signature)

(Signature)

Title/Position:

Approved By:

City Manager

(Signature)

City Engineer:

Approved By:

City Engineer

(Signature)

Mayor

(Signature)

Approved By:

Director, PW&E

(Signature)

City Commission Approval Date:

(If Required)

Approved as to Form and Legality:

City Attorney

(Signature)

EXHIBIT C
HOURLY RATE SCHEDULE

Exhibit "A"
Effective February 8, 2021

Administrative/Office Support	Rate	Expert Witness	Rate
Administrative Support I	\$55.00	Expert Witness Research	\$145.00
Administrative Support II	\$65.00	Expert Witness Testimony	\$250.00
Administrative Support III	\$75.00	Public Relations	
Administrative Support IV	\$85.00	Public Relations I	\$95.00
Senior Administrative Support	\$115.00	Geomatics / Survey & Mapping	
Senior Administrative Supervisor	\$120.00	2-Person Survey Crew	\$165.00
Administrative Department Manager	\$160.00	3-Person Survey Crew	\$200.00
Reproduction Support	\$60.00	4-Person Survey Crew	\$255.00
Information Systems I	\$95.00	Survey CADD / Technician	\$95.00
Information Systems II	\$105.00	Surveyor in Training / Technician II	\$105.00
Graphic Design		Surveyor in Training / Technician III	\$110.00
Graphic Designer I	\$55.00	Professional Surveyor & Mapper (<i>Registered Surv</i>)	\$145.00
Graphic Designer II	\$75.00	Surveyor Project Manager	\$175.00
Graphic Designer III	\$120.00	Senior Professional Survey & Mapper	\$220.00
Technical Writing		Chief Surveyor & Mapper	\$245.00
Technical Writer I	\$50.00	Unmanned Autonomous System (UAS)	
Technical Writer II	\$65.00	Unmanned Autonomous System (UAS) Operator	\$140.00
Technical Writer III	\$85.00	Unmanned Autonomous System (UAS) Technician	\$85.00
Engineering		Unmanned Autonomous System (UAS) Lidar Unit	\$1,500.00
Engineering Technician I	\$55.00	Static Terrestrial Lidar	
Engineering Technician II	\$65.00	3 Person Crew	\$180.00
Engineering Technician III	\$70.00	4 Person Crew	\$220.00
Engineering Technician IV	\$80.00	5 Person Crew	\$285.00
Engineering Technician V	\$90.00	Mobile LIDAR Unit / Daily Rate	\$4,500.00
Engineer I (<i>Graduate Eng.</i>)	\$90.00	Ground Penetrating Radar (GPR) Services	
Engineer II	\$95.00	GPR Technician Crew	\$120.00
Engineer III	\$100.00	2-Person GPR/Concrete Imaging Crew	\$185.00
Engineer IV	\$105.00	Subsurface Utility Engineering (SUE)	
Engineer V (P.E.) (<i>Registered Eng.</i>)	\$120.00	1-Person Utility Designate	\$120.00
Engineer VI (P.E.)	\$135.00	2-Person Utility Designate/Locate Crew	\$185.00
Engineer VII (P.E.)	\$150.00	3-Person Vacuum Excavation S.U.E. Crew	\$240.00
Engineer VIII (P.E.)	\$170.00	4-Person Vacuum Excavation S.U.E. Crew	\$285.00
Chief Engineer I (P.E.) (<i>20+ yrs</i>)	\$190.00	S.U.E. Project Manager	\$145.00
Chief Engineer II (P.E.) (<i>20+ yrs</i>)	\$250.00	Utility Locate Technician	\$100.00
Environmental		Senior SUE Tech	\$120.00
Environmental Scientist I	\$70.00	Planning	
Environmental Scientist II	\$90.00	Planner I	\$75.00
Environmental Scientist III	\$110.00	Planner II	\$85.00
Chief Environmental Scientist	\$125.00	Planner III	\$100.00
Senior Ecologist	\$160.00	Planner IV	\$115.00
GIS		Senior Planner I	\$125.00
GIS Technician	\$65.00	Senior Planner II	\$140.00
GIS Analyst I	\$75.00	Senior Planner III	\$165.00
GIS Analyst II	\$90.00	Designers	
GIS Analyst III	\$125.00	Designer I	\$100.00
GIS Senior Project Manager	\$180.00	Designer II	\$110.00
CEI		Designer III	\$120.00
Inspector I	\$62.00	Designer IV	\$130.00
Inspector II	\$76.00	Designer V	\$140.00
Senior Inspector I	\$90.00	Management	
Senior Inspector II	\$106.00	Project Manager I	\$95.00
Specialist (Materials, Contract, IT, etc.)	\$120.00	Project Manager II	\$100.00
Project Administrator I	\$135.00	Project Manager III	\$110.00
Inspection Manager/Proj. Admin II	\$170.00	Senior Project Manager I (<i>\$100k +</i>)	\$150.00
Resident Engineer	\$195.00	Senior Project Manager II	\$180.00
NBIS - Bridge Inspection		Senior Project Manager III	\$200.00
NBIS Engineer	\$200.00	Senior Project Manager IV	\$275.00
NBIS Team Leader	\$155.00	Supervising Engineer	\$180.00
NBIS Team Member	\$80.00	Department Managers I	\$190.00
		Department Managers II	\$220.00
		Division Managers I	\$240.00
		Division Managers II	\$285.00
		Principals	\$360.00

EXHIBIT D
TRAVEL AND SUBSISTENCE POLICY ALLOWANCES

1. Reimbursement for air fare shall be based on coach rates. First Class rates will only be approved if the CITY required and expeditious action and coach rates were unavailable.
2. Maximum mileage allowance will be the same as allowed by the IRS.
3. Car rental reimbursement shall be for compact cars, up to two occupants, and intermediate cars for over two occupants. The SURVEYOR shall attempt to obtain the lowest rates available.
4. Reimbursement for lodging shall be for the actual expenses for lodging at a single-room rate at a "non-resort" type hotel located in the vicinity of the CITY's administrative offices.
5. Meals shall be reimbursed per the current GSA.gov travel guidelines.

Reimbursement for meals shall not apply to local employees within 60-mile radius of the SURVEYOR.

6. Other necessary identifiable travel expenses, such as tolls, parking, taxis, etc., shall also be reimbursed.

All of the above expenses shall be supported by a source document with the employee's name, the project name, and brief explanation. These should be reconciled to the monthly invoice.

EXHIBIT E
KEY PERSONNEL

DRMP, INC.

PRINCIPALS

Lawrence L. Smith, Jr.
Donaldson K. Barton, Jr.
Glenn J. Lusink
Mark D. Prochak
Mark E. Puckett



941 Lake Baldwin Lane, Orlando, Florida 32814
Phone: 407.896.0594 | Fax: 407.896.4836

April 19, 2022

DRMP Job #:22-0111.0mk

KEY PERSONNEL

Vice President-in-Charge	Joseph Di Benedetto, PLS
Project Manager	Frank Lopez, PSM
QA/QC	Tegan Desmond, PSM
Right-of-Way Mapping/Design Survey	Bobby Paulk, PSM
Subsurface Utility Engineering/Design Survey	Gabriel Colon-Rivera, PSM
Aerial/Mobile LiDAR/UAS	Brent Bass, PE
Geographic Information Systems	John Gilreath, GISP
Utility Coordination	Merissa Erickson
Title Search	Robin Derr

Subconsultants

1. American Governments Services Corporation, Inc. (Tammy Mehl)
2. On Point Surveying, Inc. (Douglas Negron)

OFFICES

Ashboro, North Carolina
Boca Raton, Florida
Cary, North Carolina
Charlotte, North Carolina
Chipley, Florida
DeLand, Florida
Fort Myers, Florida
Gainesville, Florida
Jacksonville, Florida
Lakeland, Florida
Melbourne, Florida
Merritt Island, Florida
Orlando, Florida
Panama City Beach, Florida
Pensacola, Florida
Stockbridge, Georgia
Tallahassee, Florida
Tampa, Florida
Troutman, North Carolina

1 833.811 3767
www.DRMP.com



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

Work Order #:

1

Purchase Order#:

DATE: 12/14/2022.

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to DRMP, Inc. with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

CEI services for Harbin Parking Modification Project. Services are to be provided to verify construction is completed in reasonable conformance and in accordance with the FDOT Standard Specifications for Road and Bridge Construction and the FDOT Standard Plans for Road and Bridge Construction.

FORM OF COMPLETED DELIVERABLES:

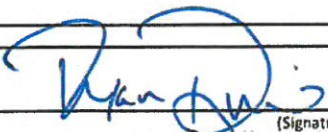
Contract Administration and On-Site Inspection of Contractor's work. DRMP, Inc., will hold preconstruction conference, hold project progress/coordination meetings, review Contractor's schedule, manage project submittal and pay application reviews, perform and document on-site inspection, and perform substantial and final acceptance project closeout procedures.

BASIS OF PAYMENT: Services shall be made on the basis of Lump Sum method in accordance with the Scope of Services, the total not to exceed \$ 89,388.00 without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed by 150 calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Project Administrator - Oversees project controls and inspectors, including checking contractors' controls and coordinating schedules, reviews constructors schedule. Reviews submittals for conformance to plans and specifications.	\$ 33,660.00
2) Senior Inspectors & Inspectors - Monitors construction activities and verifies contract installations are in accordance with approved contract documents.	\$ 54,978.00
3) Labrotatory Materials Testing	\$ 750.00
	\$ 89,388.00
Contract Dollars:	\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$89,388.00

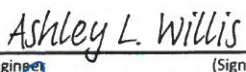
Accepted By:


(Signature)

Title/Position:

Senior Project Engineer/Area Leader

Approved By:


City Engineer (Signature)

Approved By:


Director, PW&E (Signature)

Approved as to Form and Legality:

City Attorney

Requested By:

Victor A. Aponte
Digitally signed by Victor A. Aponte
Date: 2022.12.14 13:55:59 -05'00'
(Signature)

Approved By:

City Manager (Signature)

Approved By:

Mayor (Signature)

City Commission Approval Date:

(If Required)

ITEM 7.P

Task Work Order No. 1 to American Persian Engineering & Construction, LLC for the Construction of the Harbin Parking Modification Project

Request

City Commission approval of Task Work Order No. 1 to American Persian Engineering & Construction, LLC (APEC) for the construction of the Harbin Parking Modification Project in the amount of \$342,452.00.

Explanation

On June 21, 2022, the City entered into an Annual Contract for Milling, Resurfacing and Minor Concrete Work (IFB 2022-002) with APEC to perform miscellaneous alternative paving methods on an as-needed basis on City premises and facilities. Work may include, but not limited to, milling, resurfacing, striping, concrete work and sodding. This Task Work Order will furnish all materials, labor, equipment and tools necessary to provide the contracted services for the construction of the Harbin Parking Modification Project.

This project is associated with the FDOT West Oak Street Intersection Project Right of Way Acquisition.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10345656 506393	GT2312		\$ 500,000.00	\$342,452.00

Financial Summary:

Adequate Funds are available within the Gas Tax fund for this project.

Recommendation

Staff recommends City Commission approval for Task Work Order No. 1 under the Continuing Services Annual Contract for Milling, Resurfacing and Minor Concrete Work with APEC, for the construction of the Harbin Parking Modification Project.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering
Presenter: Mike Steigerwald

Attachment(s):

City of Kissimmee

1. (S) Work Order No. 1 Form
2. Task Work Order No. 1 Proposal
3. Fully executed Agreement



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

Work Order #:

1

Purchase Order#:

DATE: 12/02/2022

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to APEC, LLC with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT: Construction Services for Harbin Parking Modifications project. Services includes all labor, equipments and materials to complete the project in accordance with the City of Kissimmee standard.

FORM OF COMPLETED DELIVERABLES:

Complete construction of the Harbin Parking lot modifications.

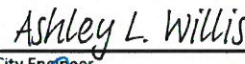
BASIS OF PAYMENT: Services shall be made on the basis of Total Quantities method in accordance with the Scope of Services, the total not to exceed \$342,452.00 without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed by 150 calendar days from the receipt of the official Notice to Proceed from the City.

FEE

1) Mobilization	\$ 27,621.00
2) Maintenance of Traffic	\$ 27,621.00
3) Silt Fence	\$ 6,300.00
4) Concrete Slab Removal	\$ 20,200.00
5) Removal of Existing Pavement (Demo Asphalt)	\$ 23,000.00
6) Excavation	\$ 32,400.00
7) Embankment 180 Cyd	\$ 9,000.00
8) Optional Base Group 11 (6" Crushed Concrete)	\$ 23,800.00
9) 1.5" Asphalt 238 SY	\$ 10,000.00
10) Ring Cover Adjustment	\$ 400.00
11) Concrete Curb	\$ 8,000.00
12) Concrete pad for temporary & Permanent dumpster	\$ 11,400.00
13) 6" Concrete	\$ 7,700.00
14) Detectable Warning Surface	\$ 1,200.00
15) Sod	\$ 15,720.00
16) Sign	\$ 300.00
17) Temporary Paint	\$ 7,000.00
18) Restriping 6" Thermo	\$ 20,900.00
19) Stop Bar 12"	\$ 240.00
20) 8' PVC Fence	\$ 1,600.00
21) Steel Bollards	\$ 6,000.00
22) Ramp H/C	\$ 3,600.00
23) Construction Entrance	\$ 2,500.00

24) Seal Coat	\$	3,000.00
25) Wheelchair Emblem	\$	250.00
26) Gate 18'	\$	2,500.00
27) S27A Throat Inlet	\$	5,000.00
28) Over excavate and back fill with Sand	\$	6,000.00
29) 12x18 RCP Pipe	\$	7,920.00
30) S-27	\$	5,000.00
31) 18" RCP	\$	16,000.00
32) S-28	\$	5,000.00
33) S-29 MH	\$	5,000.00
34) Install Drainage Opening Open Flume	\$	1,500.00
35) Temporary Access Road	\$	2,500.00
36) Pipe Connection	\$	2,500.00
37) Tree Removal	\$	1,500.00
38) New Wheel Stop	\$	1,280.00
39) Permit Fee	\$	1,000.00
40) Surveying	\$	5,000.00
41) As Built	\$	5,000.00
	\$	342,452.00
Contract Dollars:		\$ 342,452.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):		\$0.00
CONTRACT TOTAL DOLLARS:		\$342,452.00

Accepted By:	 _____ (Signature)	Requested By:	Victor A. Aponte _____ (Signature)
Title/Position:	President _____ (Signature)	Approved By:	_____ City Manager (Signature)
Approved By:	 _____ 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)		



Victor A. Aponte
Engineer II
Public Works & Engineering
City of Kissimmee

Thank you for considering APEC to perform the improvements for Harbin Parking lot. We are pleased to submit the below detailed proposal for your consideration.

Project City Of Kissimmee Harbin Parking Modification and additions
Project location 1021 W. Oak St, Kissimmee, FL 34741
PM Victor A. Aponte
Prepared by Arman Pourmirza
Date 9/22/2022

Harbin parking lot						
No	Item	Description	Unit	Qty	Unit Price	Total
1	13	Silt Fence	LF	1260	\$5.00	\$6,300.00
2	18	Concrete Slab Removal	Sq Yd	505	\$40.00	\$20,200.00
3	24	Removal of Existing Pavement (Demo Asphalt)	Sq Yd	1150	\$20.00	\$23,000.00
4	27	Excavation	CYd	1080	\$30.00	\$32,400.00
5	31	Embankment 180 Cyd	CYd	180	\$50.00	\$9,000.00
6	52	Optional Base Group 11 (6" Crushed Concrete)	Sq Yd	476	\$50.00	\$23,800.00
7	79	1.5" Asphalt 238 SY	Ton	25	\$400.00	\$10,000.00
8	88	Ring Cover Adjustment	EA	1	\$400.00	\$400.00
9	108	curb	LF	160	\$50.00	\$8,000.00
10	122	Concrete pad for temporary & Permanent dumpster	Sq Yd	120	\$95.00	\$11,400.00
11	124	6" Concrete	Sq Yd	70	\$110.00	\$7,700.00
12	130	Detectable Warning Surface	SF	20	\$60.00	\$1,200.00
13	137	Sod	Sq Yd	524	\$30.00	\$15,720.00
14	143	Sign	EA	1	\$300.00	\$300.00
15	153	Temporary Paint	LF	500	\$14.00	\$7,000.00
16	184	Restriping 6"Thermo	LF	1100	\$19.00	\$20,900.00
17	188	Stop Bar 12"	LF	12	\$20.00	\$240.00
18	NIC	8' PVC Fence	FT	40	\$40.00	\$1,600.00
19	NIC	Steel bollards	EA	4	\$1,500.00	\$6,000.00
20	NIC	Ramp H/C	EA	2	\$1,800.00	\$3,600.00
21	NIC	Construction Entrance	EA	1	\$2,500.00	\$2,500.00
22	NIC	Seal coat	Sq Yd	500	\$6.00	\$3,000.00
23	NIC	Wheelchair emblem	EA	1	\$250.00	\$250.00
24	NIC	Gate 18'	EA	1	\$2,500.00	\$2,500.00
25	NIC	S27A Throat Inlet	EA	1	\$5,000.00	\$5,000.00



26	NIC	Over excavate and back fill with Sand	CYd	60	\$100.00	\$6,000.00
27	NIC	12*18 RCP pipe	LF	72	\$110.00	\$7,920.00
28	NIC	S27	EA	1	\$5,000.00	\$5,000.00
29	NIC	18" RCP	LF	160	\$100.00	\$16,000.00
30	NIC	S-28	EA	1	\$5,000.00	\$5,000.00
31	NIC	S-29 MH	EA	1	\$5,000.00	\$5,000.00
32	NIC	Install drainage opening open flume	EA	1	\$1,500.00	\$1,500.00
33	NIC	Temporary Access Road	EA	1	\$2,500.00	\$2,500.00
34	NIC	Pipe Connection	EA	1	\$2,500.00	\$2,500.00
35	NIC	Tree removal	EA	3	\$500.00	\$1,500.00
36	NIC	Wheel stop new	EA	16	\$80.00	\$1,280.00
				Sub Total		\$276,210.00
37	1	Mobilization	%		10	\$27,621.00
38	3	Maintenance of Traffic	%		10	\$27,621.00
				TOTAL		\$342,452.00
39	NIC	Permit and permit fee (TBD)	LS	1	\$1,000.00	\$1,000.00
40	NIC	Surveying (TBD)	LS	1	\$5,000.00	\$5,000.00
41	NIC	As built (TBD)	LS	1	\$5,000.00	\$5,000.00

Arman Pourmirza
 President
 (407)619-7888

AGREEMENT between CITY OF KISSIMMEE

And

American Persian Engineering & Construction, LLC

THIS AGREEMENT is made this 21st day of June, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter "City" and American Persian Engineering & Construction, LLC, whose business address is 5401 S. Kirkman Road #336, Orlando, FL 327819, hereinafter "Contractor" and each represents as follows:

WITNESSETH

WHEREAS, City advertised IFB 2022-002 Annual Contract for Milling, Resurfacing and Minor Concrete Work, attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, Contractor provides milling, resurfacing and minor concrete work services and was the lowest responsive and responsible bidder, a copy of said bid response is attached hereto and incorporated herein as Exhibit "B"; and

WHEREAS, City desires to award IFB 2022-002 to Contractor consistent with the terms and conditions and requirements of the bid specifications.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and value considerations, the receipt and sufficiency of which I hereby acknowledged, each Party hereby promises to the other as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **SPECIFICATIONS.** Contractor agrees to perform miscellaneous alternative paving methods on an as-needed basis on City premises and facilities. Work may include, but not limited to, milling, resurfacing, striping, micro-surfacing, reclaimed asphalt paving, concrete work, and sodding.
3. **WORKMANSHIP and WARRANTY.** Contractor agrees to furnish all material, labor, equipment and tools necessary to provide the contracted services in accordance with the Exhibit "A", Exhibit "B", any and all change orders, and this Agreement. Contractor agrees to provide these services in a professional manner in accordance with the standards outlined Exhibit "A". Contractor shall supervise the performance of work by employees who shall present a favorable image for the City at all times when working on City property.
4. **TERM.** The term of this Agreement shall commence on the date of execution and terminate on September 20, 2025. This Agreement may, by mutual written consent of the Parties, be

extended for two (2) additional twelve-month periods. City reserves the right to cancel this Agreement without cause on any and all locations.

5. **PAYMENT.** Payments to Contractor shall be made only upon submission of proof of satisfactory completion of the services, or the increment(s) thereof, for which payment is made. Contractor shall provide at the post award conference a payment schedule for work phases. Payment prior to initiation of the project and receipt by the City for services for which payment is invoiced is strictly prohibited. A payment will be made based on proof of satisfactory completion of each cycle. The amount of each payment will be based upon final contract payment schedule. Invoices shall provide details of all project expenses permitted in this Agreement. Upon review and approval of the Contractor's invoice and verification that services have been rendered in conformity with this Agreement, the City, through payment issued by the Public Works and Engineering 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 the City's receipt of the invoice. If this Agreement is terminated for convenience for any reason, then the Contractor shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred, including lost profit, to the effective date of termination.
6. **BOND.** Contractor shall furnish City with a performance bond issued by a surety licensed to do business in the State of Florida prior to commencement of work in the amount of \$10,000.00.
7. **INSURANCE.** Contractor is required to submit to the 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 the City. During the term of the Agreement and any renewals, Contractor, at its sole cost and expense, shall maintain insurance coverage as follows:
 - A. **Workers Compensation:** Contractor will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.
 - B. **Comprehensive General Liability:** Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
 - C. **Comprehensive Automobile Liability:** Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
 - D. **Umbrella Insurance:** The Contractor will provide an umbrella in excess to the coverage in paragraphs B), and C) of not less than \$1,000,000.00.

8. **WORK ORDERS.** The City may issue subsequent modifications to the work order(s) for additional work that was not known or included in the Specifications that is found to be needed during the course of this Agreement and above the amount set forth in Exhibit "C." Contractor must seek approval from the City before performing any additional work. The City must provide the Contractor with written documentation of the modification to any work order within three (3) business days of verbal approval. Contractor is not obligated to perform additional work until written modification has been received from the City but may commence work based upon a reasonable assumption that written modification will be issued. Incidental additional work performed by the Contractor without City consent will be evaluated and considered for payment based upon the work's merit. If the City determines the incidental additional work was not included in the original scope of the project and required for the Contractor's uninterrupted performance in fulfillment of the contract, then the City will approve the Contractor's request for payment for incidental additional work.

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

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

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

thereof from any money, then due or thereafter to become due to the Contractor; and if such cost shall exceed the balance due to Contractor, then the Contractor shall pay the difference to the City.

11. **BREACH.** Failure of Contractor or the City to perform the covenants, conditions, or provisions of the Agreement shall constitute a material default and breach of the Agreement. In the event of any default, the City has the right to terminate this Agreement immediately without notice to Contractor. In the event of any default of the City, except the payments required under the Agreement, Contractor may terminate this Agreement immediately without notice. If the City fails to timely pay the monies required under this Agreement, it has fifteen (15) days after written notice from Contractor to cure said default, unless the City disputes satisfactory performance of services.
12. **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. The 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. The 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. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this Agreement by the City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that City is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section.
13. **INDEMNIFICATION/HOLD HARMLESS.** To the extent permitted by law, Contractor hereby releases and waives all claims against the City, its officers, employees, agents, independent Contractors for any injury or damaged to the person, property, or business of Contractor, its agents, employees, sub-contractors, or other persons, for which injury or damages result from any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Nothing in the agreement shall

be construed as a waiver of the 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.

14. **PUBLIC RECORDS.** Contractor specifically acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the Contractor shall keep and maintain public records required by the City and to comply with §119.071, F.S., shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services required under this Agreement;
- b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer, at no cost to the City, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology system of the City.

If the 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.

15. **NON-ASSIGNMENT.** Contractor shall not assign, sell or transfer this Agreement or any portion hereof without receiving the written consent of the City. This Agreement is hereby deemed to be of a personal service contact nature, thus, subcontracting any portion of this Agreement is prohibited.

16. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.
17. **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 this Agreement.
18. **WAIVER.** No failure of the City to insist upon strict performance in any one or more terms of this Agreement, nor any failure of the City to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance.
19. **NOTICES.** Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

Notice to CITY:

Natrevia Gradney-Mitchell, Public Works and Engineering Director
101 N. Church Street
Kissimmee, Florida 34741

Notice to Contractor:

Arman Pourmirza – President
5401 S. Kirkman Road #336
Orlando, Florida 32819

20. **ENTIRETY OF AGREEMENT.** This Agreement 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.
21. **MODIFICATIONS.** Any modifications or additional obligations assumed by either Party shall be binding only if written and valued considerations exchanged.

(Signature page to follow)

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

CONTRACTOR

By: Arman Pourmouza

Title: President

Date: 6/9/22

STATE OF FLORIDA

COUNTY OF Orange

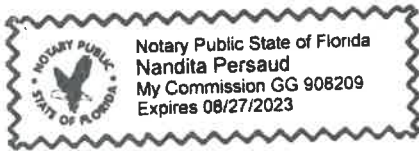
The foregoing instrument was acknowledged before me this 09 day of June, 2022, by means of ☒ physical presence or ☐ online notarization, by Arman Pourmouza as President for APEC, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: Nandita Persaud

Print Name: Nandita Persaud

My Commission Expires: 08/27/2023



CITY OF KISSIMMEE

By: Olga Gonzalez
Olga Gonzalez, Mayor-Commissioner
Date: 6/21/2022

ATTEST:

Linda Hansell
Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

Olga Sanchez on front
City Attorney



AMERPER-01

MTORRES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/9/2022

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

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

PRODUCER Jean Arthur Associates, Inc. 5626 Red Bug Lake Road Winter Springs, FL 32708	CONTACT NAME: PHONE (A/C, No, Ext): (407) 699-9930 FAX (A/C, No): (407) 699-5626 E-MAIL ADDRESS:	
INSURED AMERICAN PERSIAN ENGINEERING AND CONSTRUCTION LLC 5401 S Kirkman Rd Ste 210 Orlando, FL 32819	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Ohio Security Insurance Company	24082
	INSURER B : The Ohio Casualty Insurance Company	24074
	INSURER C : Ace American Insurance Company	22667
	INSURER D :	
	INSURER E :	
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:		BLS60986450	2/12/2022	2/12/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		BAS64076536	2/12/2022	2/12/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0		USO60986450	2/12/2022	2/12/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 Completed Ops \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	XWS64648408	3/14/2022	3/14/2023	☒ PER STATUTE ☐ OTH-ER E.I. EACH ACCIDENT \$ 1,000,000 E.I. DISEASE - EA EMPLOYEE \$ 1,000,000 E.I. DISEASE - POLICY LIMIT \$ 1,000,000
C	Pollution Liability		G73604989-01	3/17/2022	3/17/2023	General Aggregate \$ 2,000,000
C	Pollution Liability		G73604989-01	3/17/2022	3/17/2023	Each Pollution Cond \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: IFB 2022-002 Alternative Paving Methods.

CERTIFICATE HOLDER

CANCELLATION

City of Kissimmee
Attn: Victor Aponte
101 Church Street, Suite 301
Kissimmee, FL 34741

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

AUTHORIZED REPRESENTATIVE

EXHIBIT “A”

EXHIBIT “B”

**** THIS SCHEDULE OF OFFERS SHOULD BE THE FIRST PAGE SUBMITTED
WITH YOUR BID ****
Bid IFB2022-002

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

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>COST</u>
1	TOTAL BID AMOUNT OF ITEMS 5 to 229	<u>\$22,962.00</u>
2	TOTAL BID AMOUNT OF ITEMS S-1 to S-9	<u>No Bid</u>
3	TOTAL BID AMOUNT OF ITEMS S-10 to S-15	<u>No Bid</u>
4	TOTAL BID AMOUNT OF ITEMS S-16 to S-26	<u>No Bid</u>
5	TOTAL BID AMOUNT OF ITEMS S-27 to S-29	<u>No Bid</u>
6	TOTAL BID AMOUNT OF ITEMS S-30 to S-32	<u>No Bid</u>
7	TOTAL BID AMOUNT OF ITEMS S-33 to S-35	<u>No Bid</u>
8	TOTAL BID AMOUNT OF ITEMS S-36 to S-38	<u>No Bid</u>
9	TOTAL BID AMOUNT OF ITEMS S-39 to S-41	<u>No Bid</u>
10	TOTAL BID AMOUNT OF ITEMS S-42 to S-47	<u>\$1,420.00</u>
11	TOTAL BID AMOUNT OF ITEMS S-48 to S-50	<u>No Bid</u>

ACKNOWLEDGMENT OF ADDENDA NO.(S) 1,2,3&4 (IF APPLICABLE)

(Signature)

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

AP We do not take exception to Specifications.

(initial)

We take exception to Specifications as follows:

(initial)

(attach additional sheets, if necessary)

COMPANY NAME American Persian Engineering and construction LC DBA APEC LLC
COMPANY ADDRESS 5401 S. Kirkman Rd #336,
Orlando, FL 32819

NOTE: OFFERS NOT RECEIVED IN DUPLICATE MAY BE REJECTED.

VENDORS ARE RESPONSIBLE FOR DELIVERY OF THEIR BID TO THE ADDRESS
INDICATED ON THE BID COVER SHEET PRIOR TO THE DATE AND TIME SHOWN.
BIDS NOT SO DELIVERED MAY BE REJECTED.

BY: _____

(signature)

Arman Pourmirza/ President

(typed name/title of signer)

DATE: 5/05/2022

EMAIL: Arman@Apec2.com

TELEPHONE NO.: (407)619 7888

FAX NO.: () _____

Attachment A

Local Vendor Affidavit of Eligibility

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

State of Florida
County of Osceola

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

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

American Persian Engineering and
(print name of company) construction LC DBA APEC LLC MEETS ALL CRITERIA AS
REQUIRED BY THE CITY OF KISSIMMEE TO QUALIFY FOR LOCAL VENDOR PREFERENCE.
Qualification documentation attached.

Signature of Affiant

. Arman Pourmirza
Typed/Printed Name of Affiant

. 5401 s. Kirkman Rd #336

. Orlando, FL, 32819
Address of Affiant

State of Florida
County of Orange

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

(Signature of Notary Public-State of Florida)

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

Attachment C

CITY OF KISSIMMEE ALTERNATIVE PAVING METHODS SCHEDULE OF UNIT PRICES

Mobilization/Maintenance of Traffic				
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	10.00%
2	Night Work Mobilization	1	%	10.00%
3	Maintenance of Traffic	1	%	10.00%
4	Maintenance of Traffic Nightwork	1	%	10.00%
Asphalt, Earthwork, and Concrete				
5	Inlet Protection System	1-25	EA	\$200.00
6	Inlet Protection System	26-50	EA	\$50.00
7	Inlet Protection System	51-100+	EA	\$50.00
8	Floating Turbidity Barrier	1-200	LF	\$200.00
9	Floating Turbidity Barrier	201-500	LF	\$150.00
10	Floating Turbidity Barrier	501-1000+	LF	\$50.00
11	Staked Silt Fence	1-200	LF	\$20.00
12	Staked Silt Fence	201-500	LF	\$20.00
13	Staked Silt Fence	501+	LF	\$5.00
14	Clearing and Grubbing	1	AC	\$3,000.00
15	Curb and Gutter Removal	1-200	LF	\$40.00
16	Curb and Gutter Removal	201-500	LF	\$35.00
17	Curb and Gutter Removal	501+	LF	\$30.00
18	Miscellaneous Concrete Removal	1-200	SY	\$40.00
19	Existing Pipe Removal	1-200	LF	\$35.00
20	Existing Pipe Removal	201-500	LF	\$30.00
21	Existing Pipe Removal	501+	LF	\$30.00
22	Removal of Existing Pavement	1-200	SY	\$25.00
23	Removal of Existing Pavement	201-500	SY	\$23.00
24	Removal of Existing Pavement	501+	SY	\$20.00
25	Roadway Excavation	1-200	CY	\$50.00
26	Roadway Excavation	201-500	CY	\$30.00
27	Roadway Excavation	501+	CY	\$30.00
28	Swale Grading	1-200	LF	\$30.00
29	Swale Grading	201-500	LF	\$25.00
30	Swale Grading	501+	LF	\$20.00
31	Embankment (Truckload)	1-200	CY	\$50.00
32	Embankment (Truckload)	201-500	CY	\$45.00
33	Embankment (Truckload)	501+	CY	\$40.00
34	Flowable Fill	1-9	CY	\$400.00
35	Flowable Fill	10-18	CY	\$350.00
36	Flowable Fill	19-27+	CY	\$300.00
37	Asphaltic Base Course	1-200	TN	\$400.00
38	Asphaltic Base Course	201-500	TN	\$250.00

39	Asphaltic Base Course	501+	TN	\$230.00
40	Optional Base Group 1	1-200	SY	\$50.00
41	Optional Base Group 1	201-500	SY	\$28.00
42	Optional Base Group 1	501-1000+	SY	\$25.00
43	Optional Base Group 4	1-200	SY	\$30.00
44	Optional Base Group 4	201-500	SY	\$28.00
45	Optional Base Group 4	501-1000+	SY	\$25.00
46	Optional Base Group 6	1-200	SY	\$30.00
47	Optional Base Group 6	201-500	SY	\$28.00
48	Optional Base Group 6	501-1000+	SY	\$25.00
49	Optional Base Group 9	1-200	SY	\$50.00
50	Optional Base Group 9	201-500	SY	\$45.00
51	Optional Base Group 9	501-1000+	SY	\$40.00
52	Optional Base Group 11	1-200	SY	\$50.00
53	Optional Base Group 11	201-500	SY	\$45.00
54	Optional Base Group 11	501-1000+	SY	\$40.00
55	Milling (1")	1-200	SY	\$20.00
56	Milling (1")	201-500	SY	\$18.00
57	Milling (1")	501-1000+	SY	\$15.00
58	Milling (1.5")	1-200	SY	\$25.00
59	Milling (1.5")	201-500	SY	\$23.00
60	Milling (1.5")	501-1000+	SY	\$20.00
61	Milling (2")	1-200	SY	\$25.00
62	Milling (2")	201-500	SY	\$23.00
63	Milling (2")	501-1000+	SY	\$20.00
64	Milling (3")	1-200	SY	\$25.00
65	Milling (3")	201-500	SY	\$23.00
66	Milling (3")	501-1000+	SY	\$20.00
67	Milling (4")	1-200	SY	\$25.00
68	Milling (4")	201-500	SY	\$23.00
69	Milling (4")	501-1000+	SY	\$20.00
70	Milling (5")	1-200	SY	\$25.00
71	Milling (5")	201-500	SY	\$23.00
72	Milling (5")	501-1000+	SY	\$20.00
73	Milling (6")	1-200	SY	\$25.00
74	Milling (6")	201-500	SY	\$23.00
75	Milling (6")	501-1000+	SY	\$20.00
76	Type III Asphaltic Concrete	1-200	TN	\$450.00
77	Type III Asphaltic Concrete	201-500	TN	\$425.00
78	Type III Asphaltic Concrete	501+	TN	\$400.00
79	Asphaltic Concrete Type "S-1"	1-200	TN	\$400.00
80	Asphaltic Concrete Type "S-1"	201-500	TN	\$350.00
81	Asphaltic Concrete Type "S-1"	501+	TN	\$300.00
82	Asphaltic Concrete Type "S-3"	1-200	TN	\$400.00
83	Asphaltic Concrete Type "S-3"	201-500	TN	\$350.00
84	Asphaltic Concrete Type "S-3"	501+	TN	\$300.00
85	Adjusting Manholes (Metal Riser Rings)	1-5	EA	\$400.00

86	Adjusting Manholes (Metal Riser Rings)	6-10	EA	\$300.00
87	Adjusting Manholes (Metal Riser Rings)	11-20+	EA	\$200.00
88	Adjusting Valve Boxes (Metal Riser Rings)	1-5	EA	\$400.00
89	Adjusting Valve Boxes (Metal Riser Rings)	6-10	EA	\$200.00
90	Adjusting Valve Boxes (Metal Riser Rings)	11-20+	EA	\$150.00
91	18" RCP CD - CI	1-200	LF	\$200.00
92	18" RCP CD - CI	201-500	LF	\$160.00
93	18" RCP CD - CI	501+	LF	\$140.00
94	Type "A" Curb	1-25	LF	\$60.00
95	Type "A" Curb	26-50	LF	\$55.00
96	Type "A" Curb	51-100+	LF	\$50.00
97	Type "B" Curb	1-20	LF	\$60.00
98	Type "B" Curb	26-50	LF	\$55.00
99	Type "B" Curb	51-100+	LF	\$50.00
100	Type "D" Curb	1-25	LF	\$60.00
101	Type "D" Curb	26-50	LF	\$55.00
102	Type "D" Curb	51-100+	LF	\$50.00
103	Type "E" Curb	1-25	LF	\$60.00
104	Type "E" Curb	26-50	LF	\$55.00
105	Type "E" Curb	51-100+	LF	\$50.00
106	Type "F" Curb	1-25	LF	\$60.00
107	Type "F" Curb	26-50	LF	\$55.00
108	Type "F" Curb	51-100+	LF	\$50.00
109	Valley Gutter	1-25	LF	\$70.00
110	Valley Gutter	26-50	LF	\$65.00
111	Valley Gutter	51-100+	LF	\$60.00
112	Traffic Separator - (4')	1-25	LF	\$120.00
113	Traffic Separator - (4')	26-50	LF	\$110.00
114	Traffic Separator - (4')	51-100+	LF	\$100.00
115	Traffic Separator - (6')	1-25	LF	\$130.00
116	Traffic Separator - (6')	26-50	LF	\$120.00
117	Traffic Separator - (6')	51-100+	LF	\$110.00
118	Traffic Separator - (width varies)	1-25	SY	\$130.00
119	Traffic Separator - (width varies)	26-50	SY	\$120.00
120	Traffic Separator - (width varies)	51-100+	SY	\$110.00
121	Concrete Sidewalk - (4" thickness)	1-100	SY	\$100.00
122	Concrete Sidewalk - (4" thickness)	101-250	SY	\$95.00
123	Concrete Sidewalk - (4" thickness)	251-500+	SY	\$90.00
124	Concrete Sidewalk - (6" thickness)	1-100	SY	\$120.00
125	Concrete Sidewalk - (6" thickness)	101-250	SY	\$110.00
126	Concrete Sidewalk - (6" thickness)	251-500+	SY	\$100.00
127	Concrete Sidewalk - (6" Thickness)	1-100	SY	\$120.00
128	Concrete Sidewalk - (6" Thickness)	101-250	SY	\$110.00
129	Concrete Sidewalk - (6" Thickness)	251+	SY	\$100.00
130	Detectable Warning Surfaces (Inset)	1-50	SF	\$60.00
131	Detectable Warning Surfaces (Inset)	51-100	SF	\$60.00
132	Detectable Warning Surfaces (Inset)	101+	SF	\$50.00

133	Detectable Warning Surfaces (Screwdown Retro-Fit)	1-50	SF	\$60.00
134	Detectable Warning Surfaces (Screwdown Retro-Fit)	51-100	SF	\$60.00
135	Detectable Warning Surfaces (Screwdown Retro-Fit)	101+	SF	\$50.00
136	Sodding (Bahia)	1-200	SY	\$40.00
137	Sodding (Bahia)	201-500	SY	\$30.00
138	Sodding (Bahia)	501+	SY	\$15.00
139	Sodding (Floritam)	1-200	SY	\$40.00
140	Sodding (Floritam)	201-500	SY	\$30.00
141	Sodding (Floritam)	501+	SY	\$15.00
142	Loop Assembly, F&I - Type B	1	AS	\$2,000.00
Pavement Markings				
143	Install Sign (single post)	1-5	EA	\$300.00
144	Install Sign (single post)	6-15	EA	\$250.00
145	Install Sign (single post)	16-30+	EA	\$200.00
146	Install Sign (multi-post)	1-5	EA	\$450.00
147	Install Sign (multi-post)	6-15	EA	\$400.00
148	Install Sign (multi-post)	16-30+	EA	\$350.00
149	Reflective Pavement Markers (RPM's)	1-20	EA	\$20.00
150	Reflective Pavement Markings (RPM's)	21-60	EA	\$17.00
151	Reflective Pavement Markers (RPM's)	61-100+	EA	\$15.00
152	6" Solid Traffic Stripe (paint) (white)	1-200	LF	\$15.00
153	6" Solid Traffic Stripe (paint) (white)	201-500	LF	\$14.00
154	6" Solid Traffic Stripe (paint) (white)	501-1000+	LF	\$13.00
155	6" Solid Traffic Stripe (paint) (yellow)	1-200	LF	\$15.00
156	6" Solid Traffic Stripe (paint) (yellow)	201-500	LF	\$14.00
157	6" Solid Traffic Stripe (paint) (yellow)	501-1000+	LF	\$13.00
158	12" Solid Traffic Stripe (paint)	1-25	LF	\$16.00
159	12" Solid Traffic Stripe (paint)	26-50	LF	\$15.00
160	12" Solid Traffic Stripe (paint)	51-100+	LF	\$14.00
161	18" Solid Traffic Stripe (paint)	1-25	LF	\$18.00
162	18" Solid Traffic Stripe (paint)	26-50	LF	\$17.00
163	18" Solid Traffic Stripe (paint)	51-100+	LF	\$16.00
164	24" Solid Traffic Stripe (paint)	1-25	LF	\$20.00
165	24" Solid Traffic Stripe (paint)	26-50	LF	\$19.00
166	24" Solid Traffic Stripe (paint)	51-100+	LF	\$18.00
167	6" Skip Traffic Stripe (paint)	1-200	LF	\$15.00
168	6" Skip Traffic Stripe (paint)	201-500	LF	\$14.00
169	6" Skip Traffic Stripe (paint)	501-1000+	LF	\$13.00
170	6" Dotted Guide Lines (paint)	1-50	LF	\$15.00
171	6" Dotted Guide Lines (paint)	51-100	LF	\$14.00
172	6" Dotted Guide Lines (paint)	101-150+	LF	\$13.00
173	Directional Arrows (Paint)	1-10	EA	\$200.00
174	Directional Arrows (Paint)	11-50	EA	\$180.00
175	Directional Arrows (Paint)	51+	EA	\$160.00
176	Pavement Messages (Paint)	1-10	EA	\$200.00
177	Pavement Messages (Paint)	11-50	EA	\$180.00
178	Pavement Messages (Paint)	51+	EA	\$160.00

179	8" Solid Traffic Stripe (Paint)	1-200	LF	\$16.00
180	8" Solid Traffic Stripe (Paint)	201-500	LF	\$15.00
181	8" Solid Traffic Stripe (Paint)	501-1000+	LF	\$14.00
182	6" Solid Stripe/Extru. Thermo (white)	1-200	LF	\$20.00
183	6" Solid Stripe/Extru. Thermo (white)	201-500	LF	\$19.00
184	6" Solid Stripe/Extru. Thermo (white)	501-1000+	LF	\$18.00
185	6" Solid Stripe/Extru. Thermo (yellow)	1-200	LF	\$20.00
186	6" Solid Stripe/Extru. Thermo (yellow)	201-500	LF	\$19.00
187	6" Solid Stripe/Extru. Thermo (yellow)	501-1000+	LF	\$18.00
188	12" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$20.00
189	12" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$19.00
190	12" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$18.00
191	18" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$22.00
192	18" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$21.00
193	18" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$20.00
194	24" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$23.00
195	24" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$22.00
196	24" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$21.00
197	6" Skip Traffic Stripe/Extru. Thermo	1-200	LF	\$20.00
198	6" Skip Traffic Stripe/Extru. Thermo	201-500	LF	\$19.00
199	6" Skip Traffic Stripe/Extru. Thermo	501-1000+	LF	\$18.00
200	6" Dotted Guide Lines/Extru. Thermo	1-50	LF	\$20.00
201	6" Dotted Guide Lines/Extru. Thermo.	51-100	LF	\$19.00
202	6" Dotted Guide Lines/Extru. Thermo.	101-150+	LF	\$18.00
203	Directional Arrows / Extru. Thermo.	1	EA	\$200.00
204	Preformed Symbol	1	EA	\$200.00
205	Pavement Messages / Extru. Thermo.	1	EA	\$200.00
206	8" Solid Traffic Stripe / Extru. Thermo	1-200	LF	\$22.00
207	8" Solid Traffic Stripe / Extru. Thermo	201-500	LF	\$21.00
208	8" Solid Traffic Stripe / Extru. Thermo	501-1000+	LF	\$20.00
209	Remove Ex. Pavement Markings(paint)	1-100	SF	\$15.00
210	Remove Ex. Pavement Markings(paint)	101-300	SF	\$14.00
211	Remove Ex. Pavement Markings(paint)	301-500+	SF	\$13.00
212	Rem. Ex. Pavement Markings(thermo)	1-100	SF	\$15.00
213	Rem. Ex. Pavement Markings(thermo)	101-300	SF	\$14.00
214	Rem. Ex. Pavement Markings(thermo)	301-500+	SF	\$13.00
TOTAL BID AMOUNT OF ITEMS 5 to 214 ABOVE				\$22,962.00
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
HOT-IN-PLACE (With Virgin Top Course) Asphalt Recycling				
215	Asphalt Recycling	1 - 10,000	SY	No Bid
216	Asphalt Recycling	10,001 - 50,000	SY	No Bid
217	Asphalt Recycling	50,001+	SY	No Bid
218	Recycling Agent	1 - 10,000	GAL	No Bid
219	Recycling Agent	10,001 - 50,000	GAL	No Bid
220	Recycling Agent	50,001+	GAL	No Bid
HOT-IN-PLACE (100%) Asphalt Recycling				

221	Base Course HIPR	1 - 10,000	SY	No Bid
222	Base Course HIPR	10,001 - 50,000	SY	No Bid
223	Base Course HIPR	50,001+	SY	No Bid
224	2" Complete HIPR	1 - 10,000	SY	No Bid
225	2" Complete HIPR	10,001 - 50,000	SY	No Bid
226	2" Complete HIPR	50,001+	SY	No Bid
227	Asphalt Recycling Agent	1 - 10,000	SY	No Bid
228	Asphalt Recycling Agent	10,001 - 50,000	SY	No Bid
229	Asphalt Recycling Agent	50,001+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS 215 to 229 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
Specialty Paving Methods				
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-1	Rut Fill / Scratch Course (Micro)	1-50	TN	No Bid
S-2	Rut Fill / Scratch Course (Micro)	51-100	TN	No Bid
S-3	Rut Fill / Scratch Course (Micro)	101+	TN	No Bid
S-4	Single Micro Surface 20-24 lbs	1-10,000	SY	No Bid
S-5	Single Micro Surface 20-24 lbs	10,001 - 50,000	SY	No Bid
S-6	Single Micro Surface 20-24 lbs	50,001+	SY	No Bid
S-7	Double Micro Surface 30-34 lbs	1-10,000	SY	No Bid
S-8	Double Micro Surface 30-34 lbs	10,001 - 50,000	SY	No Bid
S-9	Double Micro Surface 30-34 lbs	50,001+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-1 to S-9 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-10	Single Chip Seal -#89 Granite	1-10,000	SY	No Bid
S-11	Single Chip Seal -#89 Granite	10,001 - 50,000	SY	No Bid
S-12	Single Chip Seal -#89 Granite	50,001+	SY	No Bid
S-13	Double Chip Seal -#57 w #89 Granite	1-10,000	SY	No Bid
S-14	Double Chip Seal -#57 w #89 Granite	10,001 - 50,000	SY	No Bid
S-15	Double Chip Seal -#57 w #89 Granite	50,001+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-10 to S-15 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-16	Full Depth Reclamation /6"-9"	1-10,000	SY	No Bid
S-17	Full Depth Reclamation /6"-9"	10,001 - 50,000	SY	No Bid

S-18	Full Depth Reclamation /6"-9"	50,001+	SY	No Bid
S-19	Full Depth Reclamation 9"-12"	1-10,000	SY	No Bid
S-20	Full Depth Reclamation 9"-12"	10,001 - 50,000	SY	No Bid
S-21	Full Depth Reclamation 9"-12"	50,001+	SY	No Bid
S-22	Cement for Reclamation	1	TN	No Bid
S-23	Emulsion for Reclamation	1	Gal	No Bid
S-24	Reclaimed Asphalt Paving (RAP)	1-10,000	SY	No Bid
S-25	Reclaimed Asphalt Paving (RAP)	10,001 - 50,000	SY	No Bid
S-26	Reclaimed Asphalt Paving (RAP)	50,001+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-16 to S-26 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-27	Fog Seal	1- 10,000	SY	No Bid
S-28	Fog Seal	10,001- 50,000	SY	No Bid
S-29	Fog Seal	50,000+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-27 to S-29 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-30	Cape Seal	1- 10,000	SY	No Bid
S-31	Cape Seal	10,001- 50,000	SY	No Bid
S-32	Cape Seal	50,000+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-30 to S-32 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-33	In-Place Recycling-Reconstrction	1- 10,000	SY	No Bid
S-34	In-Place Recycling-Reconstrction	10,001- 50,000	SY	No Bid
S-35	In-Place Recycling-Reconstrction	50,000+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-33 to S-35 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-36	Crack Filling/Sealing	1-500	GAL	No Bid
S-37	Crack Filling/Sealing	501 - 1000	GAL	No Bid
S-38	Crack Filling/Sealing	1,001+	GAL	No Bid

TOTAL BID AMOUNT OF ITEMS S-36 to S-38 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-39	Asphalt Rejuvenator	1-50,000	SY	No Bid
S-40	Asphalt Rejuvenator	50,001 - 100,000	SY	No Bid
S-41	Asphalt Rejuvenator	100,001+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-39 to S-41 ABOVE				No Bid
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	10.00%
2	Night Work Mobilization	1	%	10.00%
3	Maintenance of Traffic	1	%	10.00%
4	Maintenance of Traffic Nightwork	1	%	10.00%
S-42	Speed Hump W/ Curbing	1-50	FT	\$240.00
S-43	Speed Hump W/ Curbing	51-100	FT	\$240.00
S-44	Speed Hump W/ Curbing	101+	FT	\$230.00
S-45	Speed Hump No Curbing	1-50	FT	\$240.00
S-46	Speed Hump No Curbing	51-100	FT	\$240.00
S-47	Speed Hump No Curbing	101+	FT	\$230.00
TOTAL BID AMOUNT OF ITEMS S-42 to S-47 ABOVE				\$1,420.00
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	No Bid
2	Night Work Mobilization	1	%	No Bid
3	Maintenance of Traffic	1	%	No Bid
4	Maintenance of Traffic Nightwork	1	%	No Bid
S-48	Slurry Seal	1-10,000	SY	No Bid
S-49	Slurry Seal	10,001 - 50,000	SY	No Bid
S-50	Slurry Seal	50,001+	SY	No Bid
TOTAL BID AMOUNT OF ITEMS S-48 to S-50 ABOVE				No Bid

**Quantities are not guaranteed. Final payment will be based on actual quantities.

NAME OF CONTRACTOR: _____





AMERPER-01

MTORRES

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 6/9/2022

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

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

PRODUCER Jean Arthur Associates, Inc. 5626 Red Bug Lake Road Winter Springs, FL 32708		CONTACT NAME: PHONE (A/C, No, Ext): (407) 699-9930 FAX (A/C, No): (407) 699-5626 E-MAIL: ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Ohio Security Insurance Company	
		INSURER B: The Ohio Casualty Insurance Company	
		INSURER C: Ace American Insurance Company	
		INSURER D:	
		INSURER E:	
		INSURER F:	

INSURED

AMERICAN PERSIAN ENGINEERING AND CONSTRUCTION LLC
 5401 S Kirkman Rd Ste 210
 Orlando, FL 32819

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A X	COMMERCIAL GENERAL LIABILITY					
	CLAIMS-MADE ☒ OCCUR		BLS60986450	2/12/2022	2/12/2023	EACH OCCURRENCE \$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
						MED EXP (Any one person) \$ 15,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
						\$
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	☒ POLICY ☐ PRO-JECT ☐ LOC					
	OTHER:					
A	AUTOMOBILE LIABILITY		BAS64076536	2/12/2022	2/12/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	ANY AUTO OWNED AUTOS ONLY					BODILY INJURY (Per person) \$
	☒ HIRED AUTOS ONLY	☒ SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
		☒ NON-OWNED AUTOS ONLY				PROPERTY DAMAGE (Per accident) \$
						\$
B X	UMBRELLA LIAB	☒ OCCUR	USO60986450	2/12/2022	2/12/2023	EACH OCCURRENCE \$ 2,000,000
	EXCESS LIAB	CLAIMS-MADE				AGGREGATE \$ 2,000,000
	DED ☒ RETENTION \$ 0					Completed Ops \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		XWS64648408	3/14/2022	3/14/2023	☒ PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N ☒ N				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Pollution Liability		G73604989-01	3/17/2022	3/17/2023	General Aggregate 2,000,000
C	Pollution Liability		G73604989-01	3/17/2022	3/17/2023	Each Pollution Cond 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project: IFB 2022-002 Alternative Paving Methods.

CERTIFICATE HOLDER

CANCELLATION

City of Kissimmee
 Attn: Victor Aponte
 101 Church Street, Suite 301
 Kissimmee, FL 34741

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

AUTHORIZED REPRESENTATIVE

Marinda Jones

ACORD 25 (2016/03)

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EXHIBIT "C"



**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 by _____ from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1)	
2)	
3)	
4)	
5)	
6)	
7)	
	\$ -
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 Commission Approval Date: _____

Requested By: _____
(Signature)

Approved By: _____
(Signature)

Title/Position: _____

Approved By: _____
(Signature)

Title/Position: _____

ITEM 7.Q

Execution of the Osceola Home Consortium Disbursement Agreement Between Osceola County and the City of Kissimmee for FY 2022-2023

Request

Approval for the Mayor to execute the FY 2022-2023 Osceola HOME Consortium Disbursement Agreement between Osceola County and the City of Kissimmee.

Explanation

As part of the Osceola HOME Consortium, Osceola County and the City of Kissimmee are eligible to receive funding in the amount \$1,066,577 from the HOME Investment Partnerships (HOME) Program to provide affordable housing for residents. Of that amount, the City of Kissimmee will get \$373,301.95 to implement the City's portion of the program.

The Osceola HOME Consortium Disbursement Agreement is provided by Osceola County for execution. The Agreement states the rules and conditions under which the County, as the Consortium's lead agency, shall reimburse the City for eligible HOME activities using FY 2022-2023 funds. The period of the agreement is from October 1, 2022 through September 30, 2023. The funds shall be used for the following activities:

Administration - \$31,997.31

CHDO Set Aside - \$55,995.29 (includes rental housing development - new or rehab)

Projects(s) - \$285,309.35 (includes tenant-based rental assistance and rental housing development - new or rehab)

In anticipation of receiving the HOME funds, the City advertised the availability of these funds in the Osceola Gazette on June 9, 2022.

Recommendation

Execute the FY 2022-2023 Osceola HOME Consortium Disbursement Agreement between Osceola County and the City of Kissimmee.

REQUESTED CITY COMMISSION ACTION:

Execute

Approve

Department: Development Services

Presenter: Mike Steigerwald

Attachment(s):

1. (S) 2022-2023 Disbursement Agreement

**OSCEOLA HOME CONSORTIUM
DISBURSEMENT AGREEMENT
BETWEEN
OSCEOLA COUNTY AND CITY OF KISSIMMEE
FY 2022-2023**

THIS AGREEMENT will become effective the 1st day of October 2022, by and between Osceola County, a political subdivision of the state of Florida, hereinafter referred to as “COUNTY”, and the City of Kissimmee, a municipality, hereinafter referred to as “CITY”.

WHEREAS, the National Affordable Housing Act of 1990 authorized the HOME Program to provide financial assistance through the U.S. Department of Housing and Urban Development (HUD), to local governments for the production of affordable housing; and

WHEREAS, Osceola County and the City of Kissimmee, have entered into an agreement to form a HOME Consortium to obtain funding through the HOME Program, to provide affordable housing for its residents; and

WHEREAS, Osceola County, recognized by HUD as the Lead Agency of the HOME Consortium, desires to establish a mechanism for the successful implementation of the HOME Program; and

WHEREAS, the CITY has requested funds from the Consortium for the benefit of the very low and low income citizens of Osceola County; and

WHEREAS, this Agreement is authorized pursuant to the provisions of Section 163.01, Florida Statutes, and other applicable law, which authorized the exercise by agreement to two or more public agencies of any power common to them.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the COUNTY and CITY mutually agree as follows:

SECTION I. DEFINITIONS

- A. “Approved Activities” means HUD approved activities as stated in the Osceola County HOME Consortium Consolidated Action Plan.
- B. “CONSORTIUM” means the Osceola County HOME Consortium.
- C. “Consortium Approval” means the written approval of the HOME Consortium members.
- D. “CITY” means the City of Kissimmee.
- E. “COUNTY” means the Board of County Commissioners of Osceola County, Florida.
- F. “HUD” means the U.S. Department of Housing and Urban Development.

- G. "HOME Administrator" means the Osceola County Director of Human Services or his/her designee.
- H. "HOME Program" means the Consortium's HOME Investment Partnership Program.
- I. "HOME Regulations" means 24 CFR Part 92 and supplemental, additional or successor provisions.
- J. "Lead Agency" refers to Osceola County, as required under 24 CFR Part 92.101(a)(ii).
- K. "Program Income" means the gross income received by the participating jurisdiction, sub-recipient, or Community Housing Development Organization ("CHDO"), which is directly generated from the use of HOME funds and matching contributions.
- L. "Recaptured Funds" means HOME funds which are recouped by the participating jurisdiction, sub-recipient, or CHDO when HOME assisted housing does not comply with the affordability period required by 24 CFR 92.254(a)(4). The amount of recapture is determined in accordance with 24 CFR 92.254(a)(5)(ii). Any funds recouped in excess of the amount mandated by HOME regulations will constitute program income.
- M. "Very Low and Low Income" means the definitions set by HUD for the HOME Program in 24 CFR Part 92.2.

SECTION II. PURPOSE: The purpose of this Agreement is to state the covenants and conditions under which the COUNTY shall reimburse the CITY for eligible activities utilizing HOME funds for FY 2022-2023

SECTION III. SCOPE OF SERVICES: The CITY shall carry out or cause to be carried out the following approved activities:

1. CHDO activities,
2. Homebuyer activities,
3. Homeowner Rehabilitation,
4. Rental Development,
5. Tenant Based Rental Assistance, and
6. Administration as described in the Consolidated Action Plan, as may be amended, which is incorporated herein by this reference.
7. Such services shall be performed, except as otherwise specifically stated herein, by persons or instrumentalities solely under the dominion and control of the CITY. The CITY shall be responsible for all required HOME fund matching contributions, as outlined under 24 CFR Part 92.218, for approved activities carried out by the CITY.
8. The CITY shall be responsible for administering a minimum 15% of each year's allotment, to be utilized by a Community Housing Development Organization ("CHDO"), as outlined under 24 CFR Subpart G, or the CITY may choose to participate in a CHDO project administered by the COUNTY. See Exhibit "G" for the determination of the annual CHDO allotment.

9. The CITY will encumber the funds, within two (2) years, no later than September 30, 2024 for FY 2022-2023 funds. Unless otherwise authorized by the Consortium, funds which remain unencumbered will be subject to Section XIV.

SECTION IV. TERM OF AGREEMENT: This Agreement shall commence on October 1, 2022 and terminate on September 30, 2023, or on the date on which final completion of all projects funded through this Agreement is established, whichever comes last.

SECTION V. USE OF FUNDS: The COUNTY shall reimburse the CITY an amount not to exceed \$373,301.95 which is divided into the following categories:

- Administration \$31,997.31 (3% of \$1,066,577),
- CHDO set-aside \$55,995.29 (5.25% of \$1,066,577), and
- Project(s) \$285,309.35

The CHDO set-aside funds may be used jointly wherein the project would be managed by the lead agency. See Exhibit G. The parties recognize and agree that the funds must be used for eligible expenses incurred while carrying out eligible HOME Program activities as outlined in Exhibit "B". The schedule for completing these activities must be in accordance with the timeline as outlined in Exhibit "C". Under HOME Program rules, HOME grant funds have up to four (4) years to be expended.

SECTION VI. PROGRAM INCOME AND RECAPTURED FUNDS: All Program Income and Recaptured Funds generated by Approved Activities shall be retained, tracked and utilized for additional eligible activities by the CITY prior to submission of any reimbursement requests to COUNTY.

If the CITY is no longer a participant in the Osceola County HOME Consortium when the Program Income or Recaptured Funds are received, the proceeds shall be deposited in the Osceola County HOME Consortium Trust Fund and distributed proportionally among the remaining members of the Consortium; or in accordance with HOME Program regulations in place at that time.

SECTION VII. UNIFORM ADMINISTRATION REQUIREMENTS: The CITY must comply with applicable uniform administrative requirements, as described in 24 CFR 92.505.

SECTION VIII. COMPLIANCE RULES, REGULATIONS AND LAWS: During the performance of this Agreement, the CITY and COUNTY agree to comply with all applicable laws, rules, regulations and orders or their successors listed below which by reference are incorporated and made a part hereof. The CITY and COUNTY further agree to abide by all other applicable laws, rules, regulations and orders which are not referred to in this Agreement under HOME regulations.

SECTION IX. AFFIRMATIVE FAIR HOUSING MARKETING PLAN (AFHMP): The CITY shall comply with the requirements of 24 CFR 92.351. In the event the CITY does not have a policy in place, the COUNTY'S AFHMP attached hereto as Exhibit "A" shall be followed as it relates to marketing projects to income eligible households.

SECTION X. CONFLICT OF INTEREST: The CITY shall comply with the requirements of 24 CFR 92.356 relative to the Conflict of Interest provisions. The CITY, its officers, employees, agents, or consultants who exercise or have exercised any functions or responsibilities with respect to the project or who are in a position to participate in a decision making process or gain inside information with regard to the Project, shall not obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. The CITY, its officers, employees, agents, or consultants shall not occupy any HOME assisted unit provided for under this Agreement. Any possible conflicting interest on the part of CITY, its employees, or agents, shall be disclosed in writing to the COUNTY.

- No employee, officer, agent of the CITY, or its sub-recipients shall participate in the selection, award, or administration of a contract supported by HOME if a Conflict-of-Interest, either real or apparent, would be involved;
- The CITY or sub-recipient employees, officers, and agents shall not accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements; and
- Conflict of Interest violations will be subject to the terms of Section XIX. Enforcement (Suspension/Termination).

SECTION XI. OTHER APPLICABLE LAWS, RULES AND REGULATIONS:

1. 24 CFR Part 92, as amended – The regulations governing the expenditure of HOME Investment Partnership Program funds.
2. 24 CFR Part 58 – The regulations prescribing the Environmental Review procedure, including laws and procedures incorporated by reference.
3. National Flood Insurance Act of 1968.
4. 24 CFR Part 1 – The regulations promulgated pursuant to Title VI of the 1984 Civil Rights Act.
5. 24 CFR Part 107 – The regulations issued pursuant to Executive Orders 11063 which prohibits discrimination and promotes equal opportunity in housing.
6. Executive Order 11246 (and Revised Order Number 4), as amended by Executive Orders 11375 and 12086 – which establishes hiring goals for minorities and women on projects assisted with federal funds.
7. Title VII of the 1964 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972 – which prohibits discrimination in employment.

8. 24 CFR Part 135 – Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.
9. Age Discrimination Act of 1973.
10. 24 CFR Part 130 – Regulations which prohibit discrimination in employment in federally assisted construction contracts.
11. Contract Work – Hours and Safety Standards Act – where applicable.
12. Lead Based Paint Poisoning Prevention Act.
13. Section 504 of the Rehabilitation Act of 1973, as amended.
14. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
15. 29 CFR Parts 3.5 and a – Regulations which prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects as mandated by the Davis-Bacon Act, where applicable.
16. Executive Order 11914 – Prohibits discrimination with respect to the handicapped in federally assisted projects.
17. Copeland Anti-Kickback Act.
18. OMB Circular A-87–which identifies allowable administrative costs and administrative requirements.
19. Florida Statutes, Chapter 112, Part III, code of Ethics for Public Officers and Employees.
20. Public Law 100-430 – The Fair Housing Amendments Act of 1988.
21. Section 109 of Public Law 100-202 – which restricts the awarding of public works contracts to firms from foreign countries with unfair trade practices.
22. HUD – required reports, circulars, and procedures.

23. 24 CFR Part 85 – the “common rule” containing fiscal and administrative requirements for grantees and sub-recipients which are local governments. This includes OMB Circular A-102.
24. 24 CFR Part 92.257 – concerning religious organizations, as applicable.
25. Section 92.504 – minimum standards of written contracts, as applicable. Including all project requirements, type of projects to be assisted, property standards, rents and recapture/resale provisions.

SECTION XII. FUND DISBURSEMENTS: The CITY shall not request disbursement of HOME funds under this Agreement until the funds are needed for the payment of eligible costs as described in 24 CFR 92.205. The requested amount must not exceed the amount needed. Program income, interest earned, or loan repayments, hereinafter collectively referred to as (“recapture monies”) as defined in 24 CFR 92.503, as amended from time to time, derived from any projects set forth in this Agreement shall be accounted for by the CITY. Program Income received by the CITY from HOME eligible activities shall be deducted from HOME draw request (Exhibit “E” and “F”) submitted by the CITY for eligible costs. The remaining balance of eligible costs shall be requested from COUNTY on the HOME draw request (Exhibit “E” and “F”). HOME draw requests shall be submitted at least quarterly with supporting documentation (i.e. invoices for all requested disbursements; excluding administration). The final draw request shall be submitted no later than October 10, 2026.

SECTION XIII. REIMBURSEMENT: This Agreement and all rights and duties designated herein are contingent upon the release of HOME Program funds by HUD. Up to the limits of SECTION V hereof, Osceola County shall reimburse the CITY for the services described in SECTION III, pending the CITY’s commitment of HOME funds, as outlined in 24 CFR 92.500(d), or as amended by HUD. All such work shall be performed by the CITY in accordance with applicable requirements of the U.S. Department of Housing and Urban Development and with all requirements of this Agreement, and reimbursement will be contingent thereupon.

- A. Only Approved Activities, which have been set up in accordance with HUD established procedures, will be reimbursed by the COUNTY.
- B. The CITY shall be reimbursed by the COUNTY for allowable costs, in accordance with 24 CFR Part 92 and in accordance with SECTION V of this Agreement.
- C. The CITY shall submit to the COUNTY during the performance hereof the following:
 1. A cumulative expenditure statement of all costs of the project(s), minus all program income and recaptured funds, for the period from commencement through the end of the report period for which the reimbursement is being requested;
 2. This information shall be submitted in a format which meets the COUNTY’s requirements for documentation used during audits and monitoring visits. Forms provided by the COUNTY shall be used when requested. Each request shall contain a cover sheet

substantially equivalent to the Payment Request Forms attached as Exhibit “E” and Exhibit “F”.

- D. Upon receipt of the above enumerated acceptable documentation, the COUNTY will initiate the reimbursement process. Upon determination by the HOME Administrator that the services or material invoiced have been received or completed, the HOME Administrator shall authorize the Osceola County Comptroller’s Office to make payment to the CITY in the amount it determines to be payable.
- E. In the event a question or dispute arises regarding a request for reimbursement, the COUNTY shall withhold payment to the CITY for only that part of an invoice in dispute.
- F. Pursuant to Section 218.74 Florida Statutes, the Osceola County Comptroller’s Office shall issue payments within 45 days after receipt of an acceptable invoice and receipt, and approval by the Human Services Department accepting the goods and/or services provided in accordance with the terms and conditions of the agreement.
- G. If a payment request is disputed, the CITY shall provide adequate documentation within ten (10) working days from receipt of a request letter, which details the disputed charges, from the COUNTY.
- H. Payment requests shall be made no less than quarterly, with the final draw for the federal fiscal year submitted no later than October 10, 2023. Payment requests submitted later than October 10, 2023 shall be credited to the following fiscal year.

The CITY shall take financial responsibility for any and all funds, expended by the CITY on ineligible HOME activities, and shall reimburse the U.S. Department of Housing and Urban Development as mandated. The COUNTY shall take financial responsibility for any and all funds expended by the COUNTY on ineligible HOME activities

SECTION XIV. REVERSION OF ASSETS: The CITY understands that HOME funds will be reduced or recaptured by the federal government if not encumbered and expended as outlined under (Subpart K) 24 CFR 92.500(d). The HOME Consortium will meet to discuss the redistribution of HOME Grant funds to other members of the HOME Consortium for eligible projects if the reduction or recapture of HOME funds by the federal government is a potentiality.

SECTION XV. RECORDS AND REPORTS: Reimbursement is contingent upon the receipt, and satisfactory evaluation by the Lead Agency, of the following reports:

- A. Project Set-Up Report Form: The CITY shall initiate each proposed HOME activity by completing the HUD Project Set-Up Form. The Project Set-Up Report will be retained by the CITY and a copy submitted to the COUNTY with the reimbursement request.
- B. Reimbursement/Expenditure Report: The CITY shall submit reimbursement requests along with an expenditure statement as outlined in SECTION XIII of this Agreement.

- C. Quarterly Progress Report: The CITY shall complete and submit to the COUNTY, Exhibit “D” by the 10th day of January, April, July and October 2023.
- D. Project Completion Report: At the time a project has been completed, the CITY shall complete a Project Completion Report and Quarterly Progress Report, within 120 days of the final draw down request for the project. The Completion Report will be retained by the CITY and a copy submitted to the COUNTY with their reimbursement request.

XVI. AUDITS AND INSPECTIONS: All records and contracts of whatever nature required by this Agreement shall be available for audit, inspection or copying at any time during normal business hours and as often as the Lead Agency, the Consortium, HUD or Comptroller General of the United States, or other federal agency, may deem necessary. Osceola County shall have the right to obtain and inspect any audit pertaining to the performance of this Agreement made by any local, state or federal agency. The HOME Consortium shall have the right to inspect any of the CITY’s records of whatever nature required by this Agreement any time during normal business hours. The CITY shall retain all of its records and supporting documentation applicable to this Agreement for five (5) years after either the resolution of the final audit or HUD approval of the Close-out Report, whichever is later.

SECTION XVII. SUBCONTRACTS: All contracts entered into by the CITY to carry out approved HOME activities shall be made in accordance with all applicable laws, rules and regulations stipulated in this Agreement. Any additional work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each Section set forth in this Agreement.

SECTION XVIII. NON-ASSIGNABILITY: The CITY may not assign this Agreement without prior written consent of the COUNTY.

SECTION XIX. ENFORCEMENT (SUSPENSION/TERMINATION): In accordance with 24 CFR 85.43, suspension or termination may occur if the CITY materially fails to comply with any term of this Agreement. The Agreement may also be terminated for convenience in accordance with 24 CFR 85.44, which provides for termination for mutual convenience or partial termination for specified reasons.

- The CITY hereby agrees that the following events constitute a material failure sufficient to warrant suspension of payments:
 1. Improper use of HOME funds.
 2. Failure to comply with the work program or terms of this Agreement; specifically the Approved Activities indicated in the Consolidated Action Plan;
 3. Failure to submit reports as required, including a favorable audit report; and
 4. Intentional submittal of incorrect or incomplete reports in any material respect.

- If payments are withheld, the Lead Agency shall specify, in writing the actions that must be taken by the CITY as a condition precedent to resumption of payments provided that such notification shall specify a reasonable date not to exceed 20 days for compliance.

SECTION XX. INDEMNIFICATION: The CITY, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, Osceola County HOME Consortium, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind including court costs, attorney's fees and expenses, occurring or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the performance of this Agreement, except that the CITY shall not incur any liability for the negligence of the other parties named in this Section. Neither the COUNTY nor the CITY shall incur any liability for the negligence of the other.

SECTION XXI. INSURANCE: The CITY shall insure that either its insurance coverage or self-insurance program or the insurance coverage of its contracted agents is adequate and sufficient to cover the activities performed under this Agreement, as the case may be as to the particular actions undertaken.

SECTION XXII. PROJECT PUBLICITY: Any news release, project sign, or other type of publicity pertaining to the project as stated herein, must recognize the funding provided by HUD HOME grant funds. The parties shall conduct affirmative marketing in accordance with 24 CFR Part 92.351.

SECTION XXIII. AMENDMENTS: This Agreement may be amended through completion of the Amendment to Disbursement Agreement.

The CITY shall be required to handle any amendment/adjustment according to CITY policies, but will acknowledge and accept execution of this document by the Board of County Commissioners or as delegated to an authorized COUNTY staff person.

SECTION XXIV. NOTICES: Formal notices under the terms of this agreement shall be sent, by U.S. mail, as follows:

Osceola County:
Celestia McCloud, Human Services Director
Housing and Community Services Department
1392 E. Vine St.
Kissimmee, FL 34744

City of Kissimmee
Craig M. Holland, Development Services Director
Development Services Department
101 Church Street
Kissimmee, FL 34741-5054

IN WITNESS WHEREOF, the CITY and the COUNTY do hereby authorize and have executed this agreement as of the dates written.

BOARD OF COUNTY COMMISSIONERS
OSCEOLA COUNTY, FLORIDA

Don Fisher, County Manager
(As delegated by the Board on _____,
_____)

For City of Kissimmee:

Mayor

City Clerk

STATE OF FLORIDA
COUNTY OF OSCEOLA

ON THIS DAY personally appeared before me a Notary Public of the State of Florida, _____, to me well and personally known and known by me to be the person who executed the foregoing instrument as the Mayor of Kissimmee, Florida, for and on behalf of said CITY as and for its act and deed, for the uses and purposes therein expressed.

I WITNESS my signature and official seal this _____ day of _____, A.D., 202 -.

Notary Seal

Notary Public, State of Florida at Large

My commission expires: _____

EXHIBIT “A”

OSCEOLA HOME CONSORTIUM AFFIRMATIVE FAIR HOUSING MARKETING PLAN POLICY AND PROCEDURES

I. INTRODUCTION

This Affirmative Fair Housing Marketing Plan (“Marketing Plan”) is developed for use with the HOME Investment Partnership (“HOME”) Program and HOME-funded projects in accordance with the HOME Program regulations, including but not limited to 24 CFR 92.351, of the U.S. Department of Housing and Urban Development (“HUD”) regulations. The HOME Program has established procedures to affirmatively market all projects resulting in five (5) or more HOME-assisted housing units. The Plan is based on the commitment of the Osceola HOME Consortium (“the Consortium”), Consortium members, and the owners of HOME assisted development projects to affirmatively further Fair Housing (“owners”). It states the Consortium’s policy to affirmatively market the distribution of its annual HOME allocation and housing units acquired, constructed or rehabilitated under the HOME Program and describes the procedures to follow.

The Consortium has the responsibility to inform the public about the Federal Fair Housing laws, to solicit eligible persons without regard to race, color, religion, sex, national origin, familial status, or disability into the affordable housing market and to evaluate the effectiveness of these marketing efforts. If the written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §92.253(d)(3), the affirmative marketing procedures and requirements must apply in the context of the limited/preferred tenant eligibility for the project.

Citizens, public agencies, and other interested parties may review information and records relating to the Affirmative Fair Housing Marketing Plan. The Marketing Plan is posted on the Osceola County Human Services Department website and on the City of Kissimmee Development Services Department website.

II. METHODS TO DISSEMINATE AFFIRMATIVE FAIR HOUSING MARKETING REQUIREMENTS

The Consortium will use the following methods to inform the public, potential tenants, potential homeowners, potential and existing for-profit developers, and potential and existing non-profit developers, and local units of government about Federal Fair Housing laws and Affirmative Fair Housing Marketing Plan and Procedures.

A. The Osceola HOME Consortium members shall be responsible for implementing the Marketing Plan and evaluating its effectiveness as required by the HOME Program.

B. The Consortium shall inform the community about its Affirmative Marketing Plan through periodic updates at public forums, Fair Housing meetings as well as training workshops with its HOME and CHDO grantees or other similar forums.

C. At the time of HOME funding for rental housing development, the Consortium will provide the Owner of the HOME assisted project with copies of fair housing brochures. The Grantee shall provide initial tenants and rental property owners with copies of these brochures.

D. The Consortium will continue to provide general information and telephone reference numbers to persons contacting the Osceola County Human Services Department and/ or the City of Kissimmee Housing and Community Development Division with questions regarding Affirmative Marketing and Federal Fair Housing laws.

III. CONSORTIUM AFFIRMATIVE FAIR HOUSING MARKETING REQUIREMENTS

The Consortium will, at least annually, adhere to the following, or similar, Marketing Plan policies regarding announcement of availability of HOME funds:

A. Post a notice of HOME funding availability on the City's and County's websites.

B. Advertise in the Orlando Sentinel and/or Osceola News Gazette and other neighborhood/local newspapers (if available).

C. Establish and maintain a database of potentially qualified for-profit and non-profit developers and direct mail invitations to apply for funding.

IV. CONSORTIUM REQUIRED AFFIRMATIVE FAIR HOUSING MARKETING RECORD KEEPING

In order to verify that the Consortium is following Marketing Plan requirements the following record keeping procedures will be required:

A. The Consortium will maintain records of how HOME funding availability was advertised (copies of advertisements, e-mails, etc.).

B. Copies will be maintained of all training materials and meeting agendas where the Consortium's Affirmative Marketing Policy was discussed.

V. AFFIRMATIVE FAIR HOUSING MARKETING REQUIREMENTS FOR OWNERS OF HOME ASSISTED DEVELOPMENT PROJECTS

Each Owner of a HOME assisted development project must adhere to the following Affirmative Fair Housing Marketing Plan policies when HOME assisted housing units become available for rent or purchase:

A. Incorporate an Equal Housing Opportunity statement or logo in any correspondence associated with rental or home ownership opportunities developed with the use of Consortium HOME funds.

B. All marketing of HOME-assisted housing will be jurisdiction-wide and all advertising will be placed in sources of wide circulation. All ads must contain an Equal Housing Opportunity statement or logo in conformance with HUD's Fair Housing Advertising policies and guidelines.

C. Media sources should include advertisement to a particular audience (e.g., newspaper or radio stations that serve protected classes).

D. All advertisements, brochures, and other written materials should be published in at least English and Spanish, in order to reach non-English speaking audiences and displayed.

E. Contact should be made with organizations whose membership or clientele consists primarily of protected class members.

F. The project owner must display the Equal Opportunity logo and Fair Housing poster (HUD 928.1) in an area accessible to the public (e.g., rental office).

G. The Affirmative Fair Housing Marketing Plan must be made available for public inspection in the on-site project office and/or management office from which these units are administered.

H. The telephone number(s) of the telecommunication devices for the deaf (TDDs or TTY) must appear on all correspondence and outreach materials.

VI. AFFIRMATIVE MARKETING RECORD KEEPING REQUIREMENTS FOR OWNERS OF HOME ASSISTED PROJECTS

In order to verify that Owners of HOME assisted projects are following the Marketing Plan, the Consortium requires the following record keeping procedures will be required:

- A. Owner maintains records of how vacancies were advertised (copies of advertisements, etc.).
- B. Copies of all brochures, leaflets, and letters to community contacts shall be maintained in an easily accessible file.
- C. Owner shall have a written policy that outlines how all applications will be reviewed and processed. Records should show how all completed and filed applications were processed including whether an applicant was accepted or unaccepted and why an applicant was not accepted.
- D. Maintenance of information on the race, sex, ethnicity, and whether the applicant is disabled for all applicants, home buyers, and tenants. The Consortium will have the Owner submit this information on at least an annual basis to coincide with the Consortium's submission of its Consolidated Annual Performance and Evaluation Report ("CAPER").
- E. To facilitate collection and reporting of the required data, the Grantee shall fill out and maintain form HUD-935.2 *Affirmative Fair Housing Marketing Plan*.

This information will be gathered when an application is taken for either a tenant or a home buyer and information will be maintained during the entire affordability period.

VII. CONSORTIUM ASSESSMENT OF ITS AFFIRMATIVE MARKETING EFFORTS

The following actions will be taken by the Consortium to evaluate the success of its affirmative fair housing marketing efforts and that of its Owners:

- A. The Consortium will assess the results of its Affirmative Fair Housing Marketing Plan annually with a summary of "good faith efforts" taken by the Consortium in the CAPER.
- B. The Consortium will compare assessment information and evaluate the degree to which statutory and policy objectives were met. If the required steps were taken, the Consortium will determine that good faith efforts have, in fact, been made.

- C. To determine results, the Consortium may examine whether specific groups in the Consortium's service area applied for or became tenants or owners of HOME funded units that were affirmatively marketed. If the Consortium finds that specific groups are represented, particularly Hispanics, African Americans, Asians, American Indians, persons with disabilities, and women, the Consortium will assume that the Marketing Plan procedures were effective. If one or more groups are not represented within the context of existing neighborhood composition, the Consortium will review its procedures to determine what changes, if any, might be made to make the affirmative marketing efforts more effective.
- D. The Consortium will take corrective action if it is determined that an Owner of the HOME assisted project has failed to carry out affirmative marketing efforts as required. If an Owner continues to neglect responsibilities made incumbent by the terms of the HOME Agreement, the Consortium will consider taking one or both of the following actions: 1. Declare the Owner disqualified from any further assistance made available under the HOME Program. 2. Notify the Owner of the HOME assisted project that was in violation of the terms of the HOME Agreement and the Consortium may exercise its right to require immediate repayment of the HOME funding.
- E. The Consortium will not proceed with corrective action without allowing time and effort by staff to counsel the Owner of the HOME assisted project in accordance with the terms of the HOME Agreement.

EXHIBIT “B”

BUDGET

ELIGIBLE PROGRAM ACTIVITY	FUNDED AMOUNT
Homebuyer	\$
Homeowner Rehab	\$
Rental Development (new construction or rehab)	\$
TBRA	\$
Sub Total for Project(s)	\$
CHDO Set-Aside	\$
HOME Program Administration	\$
Total Home Funded Projects	\$

EXHIBIT "C"

EXPENDITURE SCHEDULE/TIMETABLE

ACTIVITY	Beginning Balance	1 ST Quarter Goal	2 ND Quarter Goal	3 RD Quarter Goal	4 th Quarter Goal	Remaining Balance
HOME Admin						
Homebuyer						
Homeowner Rehab						
CHDO Set- Aside						
Rental Development						
TBRA						

EXHIBIT "D"

QUARTERLY PROGRESS REPORT

Period Covered: _____ to _____

Date Submitted: _____

A. Project Information

Agency: City of Kissimmee

Person Preparing the Report: _____

B. Project Cost

Activity	Budget	Expenditure Goal	Actual Expenditure	% Expended	% Project Completion

C. Program Income

Program Income/Recapture:

Source of Program Income/Recapture:

D. Describe success or problems with meeting Goals (Attach Additional Sheets if Necessary) _____

E. Please specify total number of persons or households (as applicable) assisted/served this quarter.

Households	Persons	Low to Moderate Income	Low Income	White/Non-Hispanic	American Indian or Alaskan Native	Hispanic	Asian Pacific Islander	Female Headed Household

EXHIBIT “E”

HOME Program Reimbursement Request

City of Kissimmee

Date _____

Request # _____

Attached is documentation for _____ request number _____ for the reimbursement of HOME Program Expenditures described below:

Year	Activity Number	Activity Description	Total Amount Expended	Program Income	Reimbursement Due from the COUNTY
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Please provide a copy of the signed contract for each new subrecipient agreement.

Signature/Date

[illegible]

HOME Draw Request									
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[illegible][illegible][illegible][illegible]

EXHIBIT “G”

DECLARATION TO PARTICIPATE IN A JOINT CHDO PROJECT WITH LEAD AGENCY

The City of Kissimmee, a member of the Osceola HOME Consortium, hereby agrees to participate in a joint CHDO project wherein the lead agency will be responsible for managing the project.

Such funds, calculated at 15% of the City’s annual allotment, when participating in a joint project, become the responsibility of the Lead Agency to apply to an eligible CHDO project as outlined under 24 CFR Subpart G.

City of Kissimmee CHDO Allotment \$55,995.29

By signing below, the City of Kissimmee accepts and agrees to participate in a joint CHDO project, which will be managed by the lead agency, for the use of the CHDO allotment listed herein.

BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA

By: _____
County Manager/Designee

CITY OF KISSIMMEE

By: _____
Mayor

ITEM 7.R

Approval to award bid RFP2023-002 for Concession Services at Fortune Road Athletic Complex and Bob Makinson Aquatic Center to Gulfstream Catering Inc

Request

Approval to award bid RFP2023-002 for Concession Services at Fortune Road Athletic Complex and Bob Makinson Aquatic Center to Gulfstream Catering Inc and allow the City Manager to sign any additional documents or amendments regarding this contract.

Explanation

The Parks and Recreation Department recently advertised a Request for Proposal to enter into a Concession Services Agreement for Fortune Road Athletic Complex and Bob Makinson Aquatic Center. The RFP2023-002 was advertised by the Purchasing Department on October 23, 2022. The sealed bid opening was held on November 9, 2022 with two responsive proposals. These two proposals were evaluated and ranked by an evaluation committee according to the evaluation criteria provided in the RFP. Based on the scoring, the staff recommends that the Concession License Agreement for the two locations be awarded to Gulfstream Catering Inc. We would also like to allow the City Manager to sign and approve any subsequent documents including amendments pertaining to this Agreement.

The Agreement shall be for an initial period of thirty-six (36) months with an option to renew for up to two (2) additional twelve (12) month periods by written agreement.

Recommendation

Approval to award bid RFP2023-002 for Concession Services at Fortune Road Athletic Complex and Bob Makinson Aquatic Center to Gulfstream Catering Inc and allow the City Manager to sign any additional documents or amendments regarding this contract.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter: Mike Steigerwald

Attachment(s):

1. RFP2023-002 Concession Services
2. Submittals RFP2023-002 Concession Services
3. Gulfstream Catering Proposal Submission
4. (S) Concession Services Agreement at FR and BMAC 2023

REQUEST FOR PROPOSAL

- I. The CITY OF KISSIMMEE is keeping SEALED PROPOSALS on the following:
Request for Proposal Number RFP2023-002 Concession Services.
- II. All proposals must be submitted in a SEALED envelope and plainly marked with the proposal number on the exterior of the proposal envelope, one (1) original, one (1) copy and one (1) electronic copy on the CD or Flash Drive.
- III. To be considered proposals MUST be delivered OR mailed to:

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

And time stamped on or before 2:00PM November 9, 2022.

- IV. All proposals shall be opened and read publicly in the City of Kissimmee Finance Department 4th Floor, Allendale Conference Room, 101 Church Street, Kissimmee, Florida at 2:30PM November 9, 2022.
- V. All proposals must be according to specifications and conditions, and on the forms provided herein.
- VI. The Proposal's name and address shall be clearly shown on the exterior of the Sealed Envelope.
- VII. The City of Kissimmee reserves the right to accept and/or reject any or all proposals, with or without cause, to waive technicalities or to accept the proposal which, in its judgement, best serves the interest of the City of Kissimmee. Persons are advised that, if they decide to appeal any decision made concerning the award of this proposal, they will need a record of the proceeding, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be made. Proposal results other than the apparent low offer will not be provided in response to telephone inquiries. Proposals desiring a copy of the Abstract of Offers should include such request with a self-addressed stamped envelope in their proposal.



Brandon Durango
Procurement Manager

General Requirements:

1.1 PROPOSAL PREPARATION

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

1.2 SUBMISSION OF PROPOSALS

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

1.3 PRICING – (DOES NOT APPLY)

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

1.4 DELIVERY

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

1.5 DEFAULT

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

1.6 LATE PROPOSALS AND WITHDRAWAL OF OFFERS

No proposal will be accepted after the published deadline for accepting proposals in response to this solicitation. Proposals may be withdrawn at any time prior to the official

time set for the proposal opening. No modification or withdrawal of any offer received will be allowed after the time and date set for the official proposal opening.

1.7 DISCOUNTS

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

1.8 PROPOSAL EVALUATION AND AWARD

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

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

1.9 BILLING AND PAYMENT

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

1.10 SAMPLES

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

1.11 SILENCE OF SPECIFICATIONS

The silence of these specifications regarding exact details of any product or service required shall be regarded as meaning that only the best commercial practices will prevail and that only materials of first quality and correct type, size, or design are to be

used. All workmanship will be first quality. Unless otherwise specified all products provided as a result of this solicitation will be new, unused, the latest model in production, and in compliance with the enclosed specifications.

1.12 **USE OF BRAND NAMES**

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

1.13 **WARRANTY**

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

1.14 **ADDENDUMS**

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

1.15 **PROPOSERS CERTIFICATION**

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

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

1.16 **"NO PROPOSAL" RESPONSE**

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

1.17 **CFPC**

The City of Kissimmee participates in a Central Florida Purchasing Cooperative (CFPC). All bidders awarded contracts from this bid are encouraged to permit other

active members of CFPC to participate in the contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs.

1.18 COMPLIANCE WITH THE JESSICA LUNSFORD ACT

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

1.19 CONE OF SILENCE

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

Exceptions to the Cone of Silence-

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

1.20 PROTEST

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

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

2.0 SPECIAL PROVISIONS:

2.1 PUBLIC ENTITY CRIMES:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.133,F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list".

2.2 INDEMNITY

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

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

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

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

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

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

2.3 CLARIFICATION OF REQUIREMENTS

Questions regarding clarification or interpretation of the technical specifications and/or non-technical nature regarding this solicitation must be addressed **IN WRITING** to Debbie Luke, Purchasing Coordinator at 101 Church Street, Kissimmee, Florida 34741 **OR BY EMAIL** to debbie.luke@kissimmee.gov not less than seven (7) days prior to the RFP opening date. However, unless modified by a written addendum issued by the Purchasing Agent, the specifications and conditions contained herein stand as stated. Verbal communications are neither authoritative or binding. Any verbal interpretation in conflict with these specifications as written should immediately be directed in writing to the Purchasing Agent for the City of Kissimmee. Any interpretation provided to any vendor in response to inquiries regarding this solicitation which may affect the outcome of this proposal will be furnished in writing to all vendors who have received proposal packages.

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

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

2.6 THE CITY OF KISSIMMEE HAS A LOCAL VENDOR PREFERENCE POLICY

When the written bids, responses to request for proposals or quotations are received by the City as part of the competitive sealed bid process, and the lowest responsible price is offered by an individual or entity that is not an Osceola County person, firm and/or corporation and the next lowest responsible bidder is an Osceola County person, firm

and/or corporation, the Osceola County individual or entity will be given an opportunity to match the lowest price offered.

If an offer is made to match the lowest price and the Osceola County individual or entity is otherwise fully qualified and meets all City requirements, the bid shall be awarded to the Osceola County individual or entity at the lowest price. In order to receive the local vendor preference provided herein, the Osceola County individual or entity that qualifies as the next lowest price bidder hereunder, must unconditionally agree in writing to match the lowest price bid and deliver to the City designated representative by 8:30 a.m. on the third regular business day after notification of opportunity to match bid. Eligibility form is Attachment A.

2.7 SITE VISIT

Site visit on the two (2) sites will be scheduled for October 28,2022 at 10AM starting with Fortune Road then Bob Makinson Aquatic Center see address's below.

2.8 FEES AND LECSURE COST

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

2.9 FACILITY INFORMATION

The following facility information is provided to help concessionaires develop a proposal that will meet the facilities service needs.

A. Fortune Road Athletic Complex
2500 Fortune Road
Kissimmee, FL 34744

B. Bob Makinson Aquatic Center
2204 Denn John Lane
Kissimmee, FL 34744

2.10 SCOPE SERVICES

Provide concessionaire service at the City owned facilities listed in Section 2.9 including food, beverages, alcohol, and novelty items and other suitable refreshments.

2.11 This RFP contains pages 1 - 26. Please contact the Purchasing Office at 407-518-2214 if you are missing any pages.

3.0 CITY RESPONSIBILITIES

- A. City will provide vendor access to the facilities listed in Section 2.9 and allow vendor use of concession stands at these facilities in order to provide concessionaire service.
- B. City will provide and pay for all utilities (electricity, water) associated with the concession operation.
- C. The City of Kissimmee will also provide and pay for associated refuse disposal related to providing concession operations at the facilities listed in Section 2.9.

- D. City will provide cash registers. Concessionaire shall reconcile the cash deposited into cash registers on a daily/nightly basis.

3.1 CONCESSIONAIRE RESPONSIBILITIES

- A. Concessionaire is responsible for maintaining the concession stand, equipment, serving areas, and eating area in clean and sanitary fashion the meets all health code and facility requirements. The City of Kissimmee shall have the right to make inspections at any reasonable times to ensure compliance throughout the duration of the future agreement.
- B. Concessionaire is responsible for providing food, beverage, and alcohol products and personnel service sufficient to meet public demand. Concessionaire will also provide annually a list of items for sale and the City reserves the right to approve or deny these items. Concessionaire must also be able to provide food and beverage combination/packages for various groups such as birthday parties, camps, leagues, and open to the public events.
- C. Concessionaire shall keep accurate records of all sales on City premises. Concessionaire shall provide a copy of each month's sales to City no later than the 10th day of the following month during the term of this Agreement. City shall have the right to audit such records during the operating hours of premises.
- D. The successful concessionaire will be required to comply with all applicable Local, State and Federal laws, including those relating to required permits, licenses (including an off-premises liquor license (13CT), ordinances, health codes as well as equal employment opportunity and non-discrimination in the provision of services.
- E. All equipment, except cash registers, necessary to provide concessionaire service must be provided by Concessionaire. All equipment materials and product must be secured daily.
- F. Concessionaire agrees to accept at minimum cash, MasterCard, and Visa payments for concessions products.
- G. Any upgrades to the facility made by Concessionaire must be approved by the Parks, Recreation and Public Facilities Department and will become permanent property of the City of Kissimmee.
- H. Should the City believe repairs to either facility are necessary due to general use or negligence by Concessionaire, the Concessionaire shall be the responsible for the cost of the repairs.
- I. The Hours of Operation at Fortune Road Athletic Complex vary based upon the scheduling of events and league games and activities. The Hours of Operation at Fortune Road Athletic Complex are 30 minutes prior to the start of the event or first league game or activity of the day until the conclusion of the event or the conclusion of the last league game or activity of the day. The City shall provide

Licensee notice of the Fortune Road Athletics Complex scheduling of events and league games or activities on or before the 14th day before the event or the start of the league's schedule. The Hours of Operation at the Bob Makinson Aquatic Center are seasonal. The City shall provide Licensee notice of the Hours of Operation and the schedule of the operating season at Bob Makinson Aquatic Center on or before the 30th day before the beginning of its operating season. Licensee shall provide food, beverage, alcohol and novelty items concessions during the Hours of Operation the Premises expect upon closure of either premise due to inclement weather or other unforeseen circumstances.

3.2 EMPLOYEES INFORMATION/CRIMINAL HISTORY

The successful bidder shall be required to provide an annual comprehensive listing of all employees of the bidder who will be on the premises of the City of Kissimmee. This obligation is continuing in nature and must be updated by the successful bidder as additional employees who may be assigned duties on the premises of the City of Kissimmee are employed by the bidder. This information includes but is not limited to driver's licenses numbers and social security numbers. A criminal background check on any employees who may be assigned duties in any space at any City facility will be obtained by the City of Kissimmee to be kept on file by the City Human Resources department and will be available to governing agencies upon official written request. Anyone working on the premises of the City without a background check on file will be cause for immediate termination of this contract. The cost of this background check is the responsibility of the bidder and will be invoiced by the City of Kissimmee. Anyone found to have any sexual offenses, forcible felony, or second degree felony or higher on their criminal background check, including arrests and not limited to convictions, shall be ineligible to work on premises of the City of Kissimmee. Additionally, the City may determine based on the totality of an individual's criminal background check that the individual is ineligible to work on the premises of the City of Kissimmee.

3.3 COMPENSATION

- A. The awarded vendors will pay the City of Kissimmee a minimum compensation in the amount of 20% of gross food/beverage sales and minimum of 25% of gross alcohol sales. Payment to the City must be made no later than the 10th of every month for the previous month.

3.4 TERM OF CONTRACT

- A. Any contract resulting from this solicitation will be for a period of 36 months renewable for two additional 12 month periods by mutual consent, for up to an additional 24 months total. **Note: Sample contract on pages 17 – 26.**

3.5 Evaluation and Selection Process **Review/Interview:**

Proposals will be reviewed by the RFP Review and Selection Working Group based on the following point criteria;

Evaluation Criterion	Maximum Points per Evaluation Criterion
Overall completeness and quality of submission	20
Qualification of personnel, approach to food service and quality of recommendations on menu's	20
Relevant company experience in undertaking projects of similar scope, complexity, importance and value to be applied to concession services	40
Business plan for enhancing concession sales at all locations.	20
Maximum Technical Evaluation Points	100

- 3.6** Please provide information to all questions below. Answers may be given in the space provided or on separate sheets with supporting information as necessary. Proposals will be evaluated and scored based on these responses.

Applicant Information:

Company Name:

Contact Person:

Title:

Mailing Address:

Phone:

Email:

1. Please describe your organization including how long your business has been in existence under your control and/or ownership.

2. Attach information on other locations you currently operate or have operated in the last three years. If space leased, include the name of the specific representative of the company you leased space from and business phone number for each location. In addition, provide a minimum of three business related references including the business name, contact person, and current daytime phone number.
3. Please indicate if you or any other principal in your organization has been involved in a legal dispute related to your business operations. If applicable, describe the status or disposition of the lawsuit.
4. Has the owner or officer of your company ever been declared bankrupt (voluntary or involuntary) or insolvent or entered into an arrangement for the benefit of creditors? If yes, please explain.
5. Describe concessionaire's training in food service sanitation. Please attach any current certifications relating to concessionaire's business.
6. Describe or provide photos of food service staff attire.
7. Attach a complete menu of proposed beverage and food items along with portion/serving sizes and a suggested sale price for each item. This menu must be listed for both sites and will be used by the City as a component of the decision-making process. Changes in menu for a good cause will be allowed with prior authorization from

the City. The City of Kissimmee promotes healthy lifestyles and strongly desires health/lite menu selections. Please note any menu items that are vegetarian, low sugar or other.

8. Bob Makinson Aquatic Center requires a group or party package. Please provide menu options and rates for "party package".

9. If awarded this contract, can you commit to opening the facility by January 1, 2023?

_____ Yes
_____ No

10. Would you or the company be capable of providing food and beverage sales at City of Kissimmee; sponsored City special events?

_____ Yes
_____ No

11. What is your business plan for enhancing the concession sales and/or operations at all locations?

12. Attach a copy of all applicable licenses and permits per item 3.1 C or an explanation of how you plan to obtain. *Note* Failure to acquire the required items will disqualify the bid.

13. Attach any additional comments you feel relevant in assisting the City with the selection of your company as concessionaires.

Submitted by (Print Name):

Submitted by (Signature):

Position Title:

Date:

____/____/____

NOTICE

RFP2023-002

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

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

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

Company Name: _____
Address: _____

Phone Number: () _____
Fax Number: () _____
Continue on Vendor List: _____ Yes _____ No
___ Large Business ___ Small Business ___ Minority Owned

Reason for no response to the solicitation:

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

Signature

IDENTICAL TIE PROPOSALS

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

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

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

Vendor's Signature

Local Vendor Affidavit of Eligibility

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

State of Florida
County of Osceola

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

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

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

Signature of Affiant

Typed/Printed Name of Affiant

Address of Affiant

State of Florida
County of _____

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

(Signature of Notary Public-State of Florida)

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

**CONCESSION LICENSE
FOR FOOD, BEVERAGES, ALCOHOL AND NOVELTY ITEMS
AT FORTUNE ROAD ATHLETIC COMPLEX
AND BOB MAKINSON AQUATIC CENTER**

THIS LICENSE is made and entered into this ____ day of _____, 2022, by and between the City of Kissimmee, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, (hereinafter referred to as the “City”), and [enter name of Licensee and address], as the “Licensor”, and Selected Bidder, a Florida corporation, (hereafter referred to as “Licensee”), together referred to as the “Parties,” and each represent as follows:

WITNESSETH:

WHEREAS, after soliciting proposals for provision of food, beverage, alcohol and novelty items concessions at the City-owned Fortune Road Athletic Complex and Bob Makinson Aquatic Center pursuant to City of Kissimmee Request for Proposal No. _____, (hereinafter referred to as “RFP”), City has awarded this License to Licensee; and

WHEREAS, Licensee has represented that it is able to satisfactorily provide the services according to the terms and conditions of the RFP; and

NOW, THEREFORE, in consideration of the above recitals, mutual covenants, agreements, terms, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

- 1. PREMISES.** City hereby grants Licensee an exclusive license to the following properties (hereinafter “Premises”), as shown on Exhibit “A” attached hereto:
 - a. The concession space located at the Fortune Road Athletic Complex, 2500 Fortune Road, Kissimmee, FL 34744 as shown on Exhibit “A-1” attached hereto.
 - b. The concession space located at the Bob Makinson Aquatic Center, 2204 Denn John Lane, Kissimmee, FL 34744, as shown on Exhibit “A-2” attached hereto.
- 2. TERM.** This License shall be for an initial period of thirty-six (36) months, commencing on the 1st day of January, 2023. The Parties may renew the License for up to two (2) additional twelve (12) month periods by written agreement. The City Manager or the City Manger’s designee may approve such renewals on behalf of the City.
- 3. RENTAL.** Licensee shall pay to the City on or before the 10th day of each month pay 20% of all gross sales, excluding sales of alcohol, and 25% of gross alcohol sales no for the preceding month, without demand, deduction, setoff or abatement. All payments shall be made timely or may be subject to a late penalty in the amount of 1% of the fee due for each day the payment is late. If payments and applicable penalties are not received within fifteen (15) days of the payment due date, then City may cancel this License and begin procedures to collect fees. The late fee is applicable for each and every payment which is past due.
- 4. USE.** Licensee agrees to perform the activities specified in the Proposal, as shown on Exhibit “B” attached hereto (hereinafter “Scope of Work”), on the Premises during the entire term of this License, unless prevented from doing so by causes beyond Licensee’s control, and to conduct its business at all times in a reputable manner. Licensee shall acquire and maintain all licenses and permits necessary to

perform the activities specified in the Scope of Work. Licensee shall make no unlawful, improper or offensive use of Premises. All rights of License hereunder may be terminated by the City immediately in the event that any other use be made thereof. The Scope of Work at minimum shall include providing food, beverage, alcohol and novelty item concessions services at Premises to the requirements in the Hours of Operation section below.

5. **POSSESSION.** Licensee shall be granted possession of the Premises immediately upon the commencement date of this License and shall be entitled to the full use of Premises. All terms and conditions set forth herein shall immediately commence upon the signing of this License by the Parties. Upon expiration or termination of this License, Licensee shall surrender and yield possession of the Premises to the City, peacefully and without notice, and in good order and condition, but subject to ordinary wear and reasonable use and damage or destruction beyond Licensee's control and not due to the Licensee or it's employees' fault or negligence. If the Premises are unreasonably damaged, then the City shall demand reimbursement from Licensee within ten (10) days of termination or expiration and Licensee shall make such payment within ten (10) days of receipt of said demand.
6. **ALCOHOLIC BEVERAGES.** The sale of any alcoholic beverages may be allowed in accordance with local and state law.
7. **HOURS OF OPERATION.** The Hours of Operation at Fortune Road Athletic Complex vary based upon the scheduling of events and league games and activities. The Hours of Operation at Fortune Road Athletic Complex are 30 minutes prior to the start of the event or first league game or activity of the day until the conclusion of the event or the conclusion of the last league game or activity of the day. The City shall provide Licensee notice of the Fortune Road Athletics Complex scheduling of events and league games or activities on or before the 14th day before the event or the start of the league's schedule. The Hours of Operation at the Bob Makinson Aquatic Center are seasonal. The City shall provide Licensee notice of the Hours of Operation and the schedule of the operating season at Bob Makinson Aquatic Center on or before the 30th day before the beginning of its operating season. Licensee shall provide food, beverage, alcohol and novelty items concessions during the Hours of Operation the Premises expect upon closure of either premise due to inclement weather or other unforeseen circumstances.
8. **TAXES, FEES AND ASSESSMENTS.** If any rental, sales or similar taxes, fees, or special assessments are levied upon the Premises due to the existence of this License, then Licensee shall pay all such taxes so imposed.
9. **UTILITIES.** City shall procure and pay for electricity, water, and refuse disposal (hereinafter "Utilities") related to providing concession operations at Premises. City cannot guarantee the uninterrupted service of the Utilities provided for the concession operations. City shall not be liable in any manner for damages to Licensee's business and/or inventory, or for any other claim by Licensee, resulting from any interruption in utility service, unless such interruption was caused by the sole negligence of the City. Licensee shall pay for all other utilities to include internet, telecommunications, television, and security services. Licensee may provide for any security equipment or measures to protect the Premises, equipment, and inventory subject to the written approval of the City.
10. **SANITATION.** Licensee shall maintain the premises in a clean, orderly, and sanitary condition as required by the hygiene codes and standards of the Florida Departments of Business and Professional (DBPR), Agriculture and Consumer Services (DACS) Regulations, and Health (DOH) regulations. Licensee shall be responsible for all housekeeping and sanitation services in the retail, food preparation, food storage, dining, and serving areas of the Premises to include cleaning dining furniture, floors, walls up to six (6) feet above floor level, and the exterior of hoods, ducts, vents, and other equipment and fixtures used by Licensee in food storage and preparation areas. Licensee shall collect and properly

package dry refuse from the Premises and place the packed refuse at the site(s) on Premises designated by City for refuse collection.

11. MAINTENANCE AND SERVICES. City is responsible for performing preventative and corrective maintenance on facility infrastructure equipment and systems supporting the food service areas, such as, electric power distribution, lighting, HVAC, plumbing, roofing, fire alarm, fire protection, and grease trap maintenance. City shall have the right to enter upon the Premises for the purpose of inspecting, conducting tests, or for making repairs to the Premises or to any property owned or controlled by the City therein. If feasible, such repairs shall not unduly interfere with Licensee's business. City shall maintain, clean, and stocked public restrooms attached to the Premises. Licensee shall comply with all City policies and standards regarding facility infrastructure. Licensee shall maintain the Premises in good repair and in a clean, neat, orderly, and sanitary condition.

City shall inspect the Premises on an annual basis to determine any maintenance needs and operational deficiencies. Such inspections shall be performed by the Facility Management Division, in cooperation with the Parks and Recreation Department, and Licensee may participate in the inspections. A copy of inspections reports shall be maintained by the Facility Management Division and available for review by Licensee, if requested. To the extent the inspection determines certain maintenance is required, City is only responsible for those items which are considered part of the building or City-owned food service equipment or other obligations as set forth in this License.

Licensee shall permit inspection of the Premises by any county, state, or federal regulatory agency. Licensee shall notify the City, in writing, within five (5) working days of any notice, inspection, investigation, claim, demand, lawsuit, or other action by any county, state, or federal regulatory agency involving the Premises. The City may be present during any inspection by any local, state, or federal regulatory agency.

Licensee shall provide City with prompt written notice of any structural defects, maintenance problems beyond the scope of Licensee's responsibility or the need of the aforementioned structural repairs or replacements within twenty-four (24) hours. Licensee shall be responsible for any such repairs described in this paragraph if resulting from the negligent acts or omissions of Licensee, its agents, employees, invitees, licensees, customers, or clients.

In the event City pays any monies required to be paid by Licensee hereunder, City shall demand repayment of same from Licensee within ten (10) days of payment and Licensee shall make such payment within ten (10) days of receipt of said demand. Licensee's failure to timely reimburse shall be deemed a breach of this License.

12. EQUIPMENT. The City owns certain equipment at the Premises including cash registers that may be used by Licensee. Licensee shall reconcile all currency deposited into cash registers or received by credit or debit card transactions after the end of Hours of Operation on each day concession operations take place. The City and the Licensee shall jointly approve a basic inventory listing all City-owned property at the Premises which may be used by Licensee (hereinafter "inventory") within ten (10) days after the signing of this License by the Parties. The inventory may be modified in writing with the approval of the Parties. Upon expiration of the term and any additional terms under this License, the Parties shall audit the inventory to verify its correctness. Licensee shall exercise reasonable care, including but not limited to taking necessary efforts to maintain, all equipment listed on the inventory. Upon expiration or termination of this License, Licensee shall surrender and yield possession of all items listed on the inventory to the City, peacefully and without notice, and in good order and condition, but subject to ordinary wear and reasonable use and damage or destruction beyond Licensee's control and not due to the Licensee or its employees' fault or negligence. If any items listed on the inventory are missing or unreasonably damaged, then the City shall demand reimbursement from Licensee within

ten (10) days of termination or expiration and Licensee shall make such payment within ten (10) days of receipt of said demand.

13. SIGNS. Licensee agrees that any signs, brochures, menu boards, advertising, or print material to be used in connection with the Premises must have the City's written approval before installation or dissemination. Licensee may, at its own expense and subject to the City's written approval prior to installation, post the name of the business operation, hours of operation, and telephone number on the entrance doors of Premises.

14. BACKGROUND CHECKS. A Level 2 employment screening check is required for all employees with access to Premises (hereinafter "Employees") pursuant to the Florida Employment Screening Standards, Section 435.04, Florida Statutes. Licensee shall provide the full name, driver's license number if applicable, and social security number for all Employees to the City. The City shall obtain A Level 2 employment screening for all Employee. The City shall invoice Licensee for the cost of mandatory employment screening checks for all Employees and Licensee shall reimburse the City for such costs. The City, at its sole discretion, may determine that an individual is ineligible to work on the Premises.

15. MODIFICATIONS TO PREMISES. City grants Licensee the use of Premises "as is." Licensee shall not make any structural modifications, alterations, improvements, or additions in or to the Premises, or install any equipment of any kind that will require any alteration or addition to, or use of the water, heating, air-conditioning or electrical or other building systems or equipment, without the prior written approval by the City and only in accordance with local, state, and federal permitting regulations. Licensee shall pay for all charges for labor, services, and materials used in connection with any improvements or repairs to Premises undertaken by Licensee. All such additions, improvements, and fixtures, except movable furniture, shall become property of the City and remain upon the Premises and be surrendered to the City at the end of the License.

Licensee shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion or other estate of the City in the Premises or on the building or other improvements thereon, and Licensee shall notify all materialmen, contractors, artisans, mechanics and laborers and other person contracting with Licensee with respect to Premises or any part thereof that they must look to Licensee to secure payment of any bill for work done or material furnished or for any other purpose during the term of this License.

In the event of the filing of any Claim of Lien, Licensee shall promptly satisfy same or transfer it to a bond, and Licensee shall in any event protect the City's interest in underlying real estate and shall hold the City harmless against any such claims.

16. TERMINATION FOR CONVENIENCE. This License may be terminated either party, with or without cause, for any reason whatsoever, upon ninety (90) calendar days' written notice.

17. TERMINATION FOR CAUSE. If either party wishes to terminate this License for cause (hereinafter "terminating party") due to a breach of this License by the other party (hereinafter "breaching party"), then the terminating party must provide the breaching party with written notice of said failure to perform. The terminating party must give ten (10) working days from the breaching party's receipt of the Notice to Cure for the breaching party to cure or take reasonable action to commence to cure the performance concerns specified. If breaching party does not take appropriate action within the ten (10) day period, then the terminating party may issue a Final Notice to Cure. The breaching party will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the terminating party can terminate the License.

Notwithstanding the foregoing, City may immediately terminate this License, without providing

Licensee with notice of default or opportunity to cure, if City determines that Licensee has failed to comply with any of the terms and conditions of this License related to safety, indemnification, or insurance coverage.

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

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

In the event this License is terminated for cause and the City is the terminating party, any monies due from Licensee during the term of this License or any extension thereof, shall, at the option of the City, become immediately due and payable in full. Following termination, the City may immediately retake full possession of the Premises and repair or alter the Premises in such manner as City may deem necessary or advisable to re-license the Premises. Should City need to repair or alter the Premises in such a manner, City shall be entitled to recover damages.

18. INSURANCE. Licensee, at its sole cost and expense, shall cause to be maintained during the term of this Agreement, insurance as follows:

- a. **Workers Compensation:** Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.
- b. **Comprehensive General Liability (CGLI):** CGLI coverage with limits not less than \$2,000,000.00 each occurrence or CGLI with limits not less than \$1,000,000.00 each occurrence and Umbrella Insurance in excess of the CGLI of not less than \$1,000,000.00. Such policies shall include product liability coverage and such coverage shall be noted on the Certificate of Insurance. If such policies do not include product liability coverage, Licensee shall maintain Products Liability coverage with limits not less than \$2,000,000.00.

Said policies shall name the City as an additional insured. Licensee shall provide proof of this insurance to the City within ten (10) days after the signing of this License by the Parties.

19. WAIVER OF SUBROGATION. Licensee releases the City and their respective representatives from any claims for damage that are caused by or result from risks insured against under any insurance policies required to be carried by the Licensee under this License. Licensee agrees to cause the issuers of the insurance policies required to be maintained hereunder to include waivers of the rights of recovery and subrogation.

20. PERSONAL PROPERTY LIABILITY. All property of any kind that may be on Premises during the term of License shall be at the sole risk of Licensee and City shall not be liable to Licensee or any other person for any injury, loss, or damage to property or to any person on said Premises.

- 21. ASSIGNMENT AND SUBLICENSING.** Licensee shall not assign, sublet, or in any manner transfer this License or any portion hereof without the express written consent of the City, however Licensee may assign this License to a successor by merger, to an entity that acquires substantially all of Licensee's assets, or to an affiliate that controls, is controlled by, or is under common control with Licensee without City's consent.
- 22. INDEMNIFICATION.** To the extent permitted by law, Licensee, hereby releases and waives all claims against the City of Kissimmee, its officers, employees, agents, independent Contractors for any injury or damage to the person, property, or business of Licensee, its agents, employees, or other persons, for which injury or damage results from any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Notwithstanding, nothing in this License shall be construed as a waiver by the City of its right to statutory sovereign immunity pursuant to Florida Statute §768.28. Licensee agrees to indemnify and hold harmless the City, its agents, officers, employees, against any and all claims, demand, cost, and expenses of every kind and nature including reasonable attorney's fees and for the enforcement, defense, or appeals thereof arising from Licensee's performance of the License or any breach or default of Licensee.
- 23. CONDEMNATION.** If the whole or any part of the Premises shall be taken by any public authority by eminent domain, then the term of this License shall cease on the part so taken from the day the possession of that part shall be required for any public purpose, and any applicable fees shall be paid up to that day, and if such portion of the Premises is so taken as to destroy the usefulness of the Premises for the purpose for which the Premises were licensed, then, from that day Licensee shall have the right either to terminate this License or to continue in possession of the remainder under the same terms provided in this License, except the rental fee shall be reduced in proportion to the amount of the Premises taken. If Licensee shall fail to terminate this License within thirty (30) days after notice of said taking, said failure shall be regarded as a waiver of its right to cancel, and this License shall continue for the remainder of the term. If Licensee exercises its right to cancel, all advanced fees paid by Licensee shall be adjusted to the date of said taking. If Licensee fails to exercise its right to cancel, Licensee shall, at its own cost and expense, make the repairs made necessary resulting from said partial taking. Licensee shall receive notice of the commencement of condemnation proceedings within thirty (30) days of the City's notice of their initiation if commenced by a third party, or within thirty (30) days of their initiation if commenced by the City.
- 24. DESTRUCTION OF PREMISES.** If the Premises shall, without fault of Licensee, be destroyed by fire, storm, or other casualty or be so damaged thereby as to become wholly or partially untenable, City may, by written notice delivered to Licensee within thirty (30) days after such destruction or damage, elect to rebuild or repair Premises. In such event, this License shall remain in force, and City shall rebuild or repair the Premises within a reasonable time after such election, putting the Premises in as good a condition as they were at the time immediately prior to the destruction or damage. For that purpose, City may enter the Premises, and rent shall abate during the time the Premises are untenable. If City elects not to restore or rebuild, Licensee may terminate this License. If either party so elects, this License shall terminate effective the date of said destruction.
- 25. BREACH.** Failure of Licensee or the City to perform the covenants, conditions, or provisions of the License shall constitute a material default and breach of the Licensee. In the event of any default, the City or the Licensee has the right to seek termination of this License in accordance with the provisions of the Termination for Cause Section above.
- 26. NOTICE.** Any and all notices required by this agreement shall be in writing and either hand delivered

or, if sent by U.S. Mail or overnight delivery shall be addressed as follows:

City of Kissimmee Steve L. Lackey Parks and Recreation 101 Church Street, Suite 330 Kissimmee, FL 34741	Licensee
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Either party may change, by written notice as provided herein, the addresses or person for receipt of notices. All notices and other communications given pursuant to this Licensee to be served, given, or delivered upon either party shall be in writing and shall be sent by registered mail, or return receipt, or by a national overnight receipt delivery service (e.g., Federal Express). Such notices shall be deemed served, given, and delivered on the earlier of the following: (1) the date of actual receipt; (2) the fifth (5th) business day after any registered or certified notice was deposited in a sealed envelope in the U.S. mail, postage prepaid; (3) the next business day after any notice was delivered (on a business day to a receipted overnight delivery service of said notice accepted same).

- 27. WAIVER.** No failure of the City to insist upon strict performance in any one or more terms of this License, nor any failure of the City to exercise any right or remedy under this License shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance.
- 28. HEADINGS AND CAPTIONS.** All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement and may not be used to define, describe, interpret or construe any provision of this Agreement.
- 29. AMENDMENTS.** This Agreement may be altered, amended, extended, modified and/or revised only by a written instrument subsequently executed by the parties to this Agreement.
- 30. SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.
- 31. ATTACHMENTS.** Attachments to this License shall be deemed to be incorporated into this License as if fully set forth verbatim into the body of this License.
- 32. NO THIRD PARTIES BENEFICIARIES.** This License shall inure to the benefit of the Parties to this License and is for the exclusive benefit of said Parties. This License shall not be deemed to be made for the benefit of any other entity or person not so specified, including specifically but not limited to the selected Licensee.
- 33. RELATIONSHIP OF THE PARTIES; CONSTRUCTION OF LICENSE.** Nothing contained herein shall be deemed or construed as creating a principal and agent relationship or a joint venture between the Parties. The Parties understand and agree that neither the method of computation of rent,

nor any other provision contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of City and Licensee.

34. GOVERNING LAW. The laws of the State of Florida govern the validity, enforcement, and interpretation of this Agreement. Venue for any cause of action asserted by any party brought in State Court shall be in Osceola County. Venue for any action brought in Federal court shall be in the Middle District of Florida, Orlando Division.

35. COMPLIANCE WITH FEDERAL, STATE, COUNTY, AND LOCAL LAWS. The Parties shall comply with all Federal, State, County and local laws, regulations, ordinances, and health and safety rules and regulations at all times.

36. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

37. HAZARDOUS SUBSTANCES. Licensee shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on or in the Premises. Licensee shall not do, nor allow anyone else to do, anything affecting the Premises that is in violation of any environmental law or regulation. The preceding two sentences shall not apply to the presence, use, or storage on the Premises of small quantities of hazardous substances that are generally recognized to be appropriate to normal maintenance use. If Licensee learns or is notified by any governmental authority that any removal or other remediation of any hazardous substances affecting the Premises is necessary, Licensee shall promptly take all necessary remedial action in accordance with environmental law.

As used in this Paragraph, “hazardous substances” are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph, “environmental law” means Federal laws and laws of the jurisdiction where the Premises is located that relate to health, safety, or environmental protection.

38. NO WAIVER OF SOVEREIGN IMMUNITY. Notwithstanding, nothing in this Agreement shall be construed as a waiver by the CITY of its rights to statutory sovereign immunity pursuant to Fla. Stat. §768.28.

39. WAVIER OF JURY TRIAL/AWARD OF ATTORNEY’S FEES. It is mutually agreed by and between the Parties that each of the Parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this License. In any such action, each party shall be responsible for their own attorney’s fees, including those incurred in appellate proceedings.

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

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

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

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

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives have executed this License effective the _____ day of _____, 2022.

Licensee:

By: _____

WITNESS AS TO LICENSEE:

By: _____

CITY OF KISSIMMEE

By: _____

Mayor - Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legal sufficiency:

Olga Sanchez de Fuentes, City Attorney

City of Kissimmee
SUBMITTALS OPENING SHEET

RFP2023-002 Concession Services

November 9, 2022 at 2:30 PM EST

COMPANY NAME	ADDENDUMS	CITY, STATE
Gulfstream Catering	Yes	Kissimmee, FL
Top Chef X-Press LLC	Yes	Orlando, FL

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.

Gulfstream Catering, Inc.

**P.O. Box 450547
Kissimmee, FL 34745**

RFP2023-002

Evaluation Criterion	Maximum Points per Evaluation Criterion
Overall completeness and quality of submission	20
Qualification of personnel, approach to food service and quality of recommendations on menu's	20
Relevant company experience in undertaking projects of similar scope, complexity, importance and value to be applied to concession services	40
Business plan for enhancing concession sales at all locations.	20
Maximum Technical Evaluation Points	100

- 3.6** Please provide information to all questions below. Answers may be given in the space provided or on separate sheets with supporting information as necessary. Proposals will be evaluated and scored based on these responses.

Applicant Information:

Company Name: Gulfstream Catering Inc

Contact Person: Rick Crawford

Title: President / Owner

Mailing Address: P.O. Box 450547 Kissimmee, FL 34745-0547

Phone: (407)933-4333

Email: gulfstreamcatering@gmail.com

- Please describe your organization including how long your business has been in existence under your control and/or ownership.

Our company offers concessionaire services. We have been in service since March 15, 2014, under the same ownership.

2. Attach information on other locations you currently operate or have operated in the last three years. If space leased, include the name of the specific representative of the company you leased space from and business phone number for each location. In addition, provide a minimum of three business related references including the business name, contact person, and current daytime phone number.

We have serviced the same sites since our inception. These have been the City of Kissimmee's four concession locations as well as City events such as the July 4th festivities.

For business related references see Exhibit A

3. Please indicate if you or any other principal in your organization has been involved in a legal dispute related to your business operations. If applicable, describe the status or disposition of the lawsuit.

Not Applicable

4. Has the owner or officer of your company ever been declared bankrupt (voluntary or involuntary) or insolvent or entered into an arrangement for the benefit of creditors? If yes, please explain.

NO

5. Describe concessionaire's training in food service sanitation. Please attach any current certifications relating to concessionaire's business.

The concessionaire has been in the Food Industry for over 40 years.
Serv Safe Certification see Exhibit B

6. Describe or provide photos of food service staff attire.

See Exhibit C

7. Attach a complete menu of proposed beverage and food items along with portion/serving sizes and a suggested sale price for each item. This menu must be listed for both sites and will be used by the City as a component of the decision-making process. Changes in menu for a good cause will be allowed with prior authorization from

the City. The City of Kissimmee promotes healthy lifestyles and strongly desires health/lite menu selections. Please note any menu items that are vegetarian, low sugar or other.

See attached Exhibit D (Fortune Road) and E (Makinson Aquatic)

8. Bob Makinson Aquatic Center requires a group or party package. Please provide menu options and rates for "party package".

See attached Exhibit F

9. If awarded this contract, can you commit to opening the facility by January 1, 2023?

☒ Yes
☐ No

10. Would you or the company be capable of providing food and beverage sales at City of Kissimmee; sponsored City special events?

☒ Yes
☐ No

11. What is your business plan for enhancing the concession sales and/or operations at all locations?

To continue listening to the requests of our guests and provide the highest quality of service that they have come to expect.

12. Attach a copy of all applicable licenses and permits per item 3.1 C or an explanation of how you plan to obtain. *Note* Failure to acquire the required items will disqualify the bid.

See attached Exhibit G

13. Attach any additional comments you feel relevant in assisting the City with the selection of your company as concessionaires.

Submitted by (Print Name):

Rick Crawford

Submitted by (Signature):



Position Title:

President / owner

Date:

11 / 7 / 22

NOTICE

RFP2023-002

NOT APPLICABLE

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

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

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

Company Name: _____
Address: _____

Phone Number: () _____

Fax Number: () _____

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

Reason for no response to the solicitation:

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

Signature

IDENTICAL TIE PROPOSALS

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

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

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


Vendor's Signature

Attachment A

Local Vendor Affidavit of Eligibility

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

State of Florida
County of Osceola

Before me on this 7th day of November 20 22, personally appeared

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

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


Signature of Affiant

Rick Crawford
Typed/Printed Name of Affiant

P.O. Box 451145

Kissimmee, FL 34745-1145
Address of Affiant

State of Florida
County of Osceola

Sworn to (or affirmed) and subscribed before me this 7th day of November 20 22 by


(Signature of Notary Public-State of Florida)

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

**CONCESSION LICENSE
FOR FOOD, BEVERAGES, ALCOHOL AND NOVELTY ITEMS
AT FORTUNE ROAD ATHLETIC COMPLEX
AND BOB MAKINSON AQUATIC CENTER**

THIS LICENSE is made and entered into this ___ day of _____, 2022, by and between the City of Kissimmee, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, (hereinafter referred to as the “City”), and [enter name of Licensee and address], as the “Licensor”, and Selected Bidder, a Florida corporation, (hereafter referred to as “Licensee”), together referred to as the “Parties,” and each represent as follows:

WITNESSETH:

WHEREAS, after soliciting proposals for provision of food, beverage, alcohol and novelty items concessions at the City-owned Fortune Road Athletic Complex and Bob Makinson Aquatic Center pursuant to City of Kissimmee Request for Proposal No. 2023-002 (hereinafter referred to as “RFP”), City has awarded this License to Licensee; and

WHEREAS, Licensee has represented that it is able to satisfactorily provide the services according to the terms and conditions of the RFP; and

NOW, THEREFORE, in consideration of the above recitals, mutual covenants, agreements, terms, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. **PREMISES.** City hereby grants Licensee an exclusive license to the following properties (hereinafter “Premises”), as shown on Exhibit “A” attached hereto:
 - a. The concession space located at the Fortune Road Athletic Complex, 2500 Fortune Road, Kissimmee, FL 34744 as shown on Exhibit “A-1” attached hereto.
 - b. The concession space located at the Bob Makinson Aquatic Center, 2204 Denn John Lane, Kissimmee, FL 34744, as shown on Exhibit “A-2” attached hereto.
2. **TERM.** This License shall be for an initial period of thirty-six (36) months, commencing on the 1st day of January, 2023. The Parties may renew the License for up to two (2) additional twelve (12) month periods by written agreement. The City Manager or the City Manger’s designee may approve such renewals on behalf of the City.
3. **RENTAL.** Licensee shall pay to the City on or before the 10th day of each month pay 20% of all gross sales, excluding sales of alcohol, and 25% of gross alcohol sales no for the preceding month, without demand, deduction, setoff or abatement. All payments shall be made timely or may be subject to a late penalty in the amount of 1% of the fee due for each day the payment is late. If payments and applicable penalties are not received within fifteen (15) days of the payment due date, then City may cancel this License and begin procedures to collect fees. The late fee is applicable for each and every payment which is past due.
4. **USE.** Licensee agrees to perform the activities specified in the Proposal, as shown on Exhibit “B” attached hereto (hereinafter “Scope of Work”), on the Premises during the entire term of this License, unless prevented from doing so by causes beyond Licensee’s control, and to conduct its business at all times in a reputable manner. Licensee shall acquire and maintain all licenses and permits necessary to

perform the activities specified in the Scope of Work. Licensee shall make no unlawful, improper or offensive use of Premises. All rights of License hereunder may be terminated by the City immediately in the event that any other use be made thereof. The Scope of Work at minimum shall include providing food, beverage, alcohol and novelty item concessions services at Premises to the requirements in the Hours of Operation section below.

5. **POSSESSION.** Licensee shall be granted possession of the Premises immediately upon the commencement date of this License and shall be entitled to the full use of Premises. All terms and conditions set forth herein shall immediately commence upon the signing of this License by the Parties. Upon expiration or termination of this License, Licensee shall surrender and yield possession of the Premises to the City, peacefully and without notice, and in good order and condition, but subject to ordinary wear and reasonable use and damage or destruction beyond Licensee's control and not due to the Licensee or its employees' fault or negligence. If the Premises are unreasonably damaged, then the City shall demand reimbursement from Licensee within ten (10) days of termination or expiration and Licensee shall make such payment within ten (10) days of receipt of said demand.
6. **ALCOHOLIC BEVERAGES.** The sale of any alcoholic beverages may be allowed in accordance with local and state law.
7. **HOURS OF OPERATION.** The Hours of Operation at Fortune Road Athletic Complex vary based upon the scheduling of events and league games and activities. The Hours of Operation at Fortune Road Athletic Complex are 30 minutes prior to the start of the event or first league game or activity of the day until the conclusion of the event or the conclusion of the last league game or activity of the day. The City shall provide Licensee notice of the Fortune Road Athletics Complex scheduling of events and league games or activities on or before the 14th day before the event or the start of the league's schedule. The Hours of Operation at the Bob Makinson Aquatic Center are seasonal. The City shall provide Licensee notice of the Hours of Operation and the schedule of the operating season at Bob Makinson Aquatic Center on or before the 30th day before the beginning of its operating season. Licensee shall provide food, beverage, alcohol and novelty items concessions during the Hours of Operation the Premises expect upon closure of either premise due to inclement weather or other unforeseen circumstances.
8. **TAXES, FEES AND ASSESSMENTS.** If any rental, sales or similar taxes, fees, or special assessments are levied upon the Premises due to the existence of this License, then Licensee shall pay all such taxes so imposed.
9. **UTILITIES.** City shall procure and pay for electricity, water, and refuse disposal (hereinafter "Utilities") related to providing concession operations at Premises. City cannot guarantee the uninterrupted service of the Utilities provided for the concession operations. City shall not be liable in any manner for damages to Licensee's business and/or inventory, or for any other claim by Licensee, resulting from any interruption in utility service, unless such interruption was caused by the sole negligence of the City. Licensee shall pay for all other utilities to include internet, telecommunications, television, and security services. Licensee may provide for any security equipment or measures to protect the Premises, equipment, and inventory subject to the written approval of the City.
10. **SANITATION.** Licensee shall maintain the premises in a clean, orderly, and sanitary condition as required by the hygiene codes and standards of the Florida Departments of Business and Professional (DBPR), Agriculture and Consumer Services (DACS) Regulations, and Health (DOH) regulations. Licensee shall be responsible for all housekeeping and sanitation services in the retail, food preparation, food storage, dining, and serving areas of the Premises to include cleaning dining furniture, floors, walls up to six (6) feet above floor level, and the exterior of hoods, ducts, vents, and other equipment and fixtures used by Licensee in food storage and preparation areas. Licensee shall collect and properly

package dry refuse from the Premises and place the packed refuse at the site(s) on Premises designated by City for refuse collection.

- 11. MAINTENANCE AND SERVICES.** City is responsible for performing preventative and corrective maintenance on facility infrastructure equipment and systems supporting the food service areas, such as, electric power distribution, lighting, HVAC, plumbing, roofing, fire alarm, fire protection, and grease trap maintenance. City shall have the right to enter upon the Premises for the purpose of inspecting, conducting tests, or for making repairs to the Premises or to any property owned or controlled by the City therein. If feasible, such repairs shall not unduly interfere with Licensee's business. City shall maintain, clean, and stocked public restrooms attached to the Premises. Licensee shall comply with all City policies and standards regarding facility infrastructure. Licensee shall maintain the Premises in good repair and in a clean, neat, orderly, and sanitary condition.

City shall inspect the Premises on an annual basis to determine any maintenance needs and operational deficiencies. Such inspections shall be performed by the Facility Management Division, in cooperation with the Parks and Recreation Department, and Licensee may participate in the inspections. A copy of inspections reports shall be maintained by the Facility Management Division and available for review by Licensee, if requested. To the extent the inspection determines certain maintenance is required, City is only responsible for those items which are considered part of the building or City-owned food service equipment or other obligations as set forth in this License.

Licensee shall permit inspection of the Premises by any county, state, or federal regulatory agency. Licensee shall notify the City, in writing, within five (5) working days of any notice, inspection, investigation, claim, demand, lawsuit, or other action by any county, state, or federal regulatory agency involving the Premises. The City may be present during any inspection by any local, state, or federal regulatory agency.

Licensee shall provide City with prompt written notice of any structural defects, maintenance problems beyond the scope of Licensee's responsibility or the need of the aforementioned structural repairs or replacements within twenty-four (24) hours. Licensee shall be responsible for any such repairs described in this paragraph if resulting from the negligent acts or omissions of Licensee, its agents, employees, invitees, licensees, customers, or clients.

In the event City pays any monies required to be paid by Licensee hereunder, City shall demand repayment of same from Licensee within ten (10) days of payment and Licensee shall make such payment within ten (10) days of receipt of said demand. Licensee's failure to timely reimburse shall be deemed a breach of this License.

- 12. EQUIPMENT.** The City owns certain equipment at the Premises including cash registers that may be used by Licensee. Licensee shall reconcile all currency deposited into cash registers or received by credit or debit card transactions after the end of Hours of Operation on each day concession operations take place. The City and the Licensee shall jointly approve a basic inventory listing all City-owned property at the Premises which may be used by Licensee (hereinafter "inventory") within ten (10) days after the signing of this License by the Parties. The inventory may be modified in writing with the approval of the Parties. Upon expiration of the term and any additional terms under this License, the Parties shall audit the inventory to verify its correctness. Licensee shall exercise reasonable care, including but not limited to taking necessary efforts to maintain, all equipment listed on the inventory. Upon expiration or termination of this License, Licensee shall surrender and yield possession of all items listed on the inventory to the City, peacefully and without notice, and in good order and condition, but subject to ordinary wear and reasonable use and damage or destruction beyond Licensee's control and not due to the Licensee or its employees' fault or negligence. If any items listed on the inventory are missing or unreasonably damaged, then the City shall demand reimbursement from Licensee within

ten (10) days of termination or expiration and Licensee shall make such payment within ten (10) days of receipt of said demand.

13. **SIGNS.** Licensee agrees that any signs, brochures, menu boards, advertising, or print material to be used in connection with the Premises must have the City's written approval before installation or dissemination. Licensee may, at its own expense and subject to the City's written approval prior to installation, post the name of the business operation, hours of operation, and telephone number on the entrance doors of Premises.
14. **BACKGROUND CHECKS.** A Level 2 employment screening check is required for all employees with access to Premises (hereinafter "Employees") pursuant to the Florida Employment Screening Standards, Section 435.04, Florida Statutes. Licensee shall provide the full name, driver's license number if applicable, and social security number for all Employees to the City. The City shall obtain A Level 2 employment screening for all Employee. The City shall invoice Licensee for the cost of mandatory employment screening checks for all Employees and Licensee shall reimburse the City for such costs. The City, at its sole discretion, may determine that an individual is ineligible to work on the Premises.
15. **MODIFICATIONS TO PREMISES.** City grants Licensee the use of Premises "as is." Licensee shall not make any structural modifications, alterations, improvements, or additions in or to the Premises, or install any equipment of any kind that will require any alteration or addition to, or use of the water, heating, air-conditioning or electrical or other building systems or equipment, without the prior written approval by the City and only in accordance with local, state, and federal permitting regulations. Licensee shall pay for all charges for labor, services, and materials used in connection with any improvements or repairs to Premises undertaken by Licensee. All such additions, improvements, and fixtures, except movable furniture, shall become property of the City and remain upon the Premises and be surrendered to the City at the end of the License.

Licensee shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion or other estate of the City in the Premises or on the building or other improvements thereon, and Licensee shall notify all materialmen, contractors, artisans, mechanics and laborers and other person contracting with Licensee with respect to Premises or any part thereof that they must look to Licensee to secure payment of any bill for work done or material furnished or for any other purpose during the term of this License.

In the event of the filing of any Claim of Lien, Licensee shall promptly satisfy same or transfer it to a bond, and Licensee shall in any event protect the City's interest in underlying real estate and shall hold the City harmless against any such claims.
16. **TERMINATION FOR CONVENIENCE.** This License may be terminated either party, with or without case, for any reason whatsoever, upon ninety (90) calendar days' written notice.
17. **TERMINATION FOR CAUSE.** If either party wishes to terminate this License for cause (hereinafter "terminating party") due to a breach of this License by the other party (hereinafter "breaching party"), then the terminating party must provide the breaching party with written notice of said failure to perform. The terminating party must give ten (10) working days from the breaching party's receipt of the Notice to Cure for the breaching party to cure or take reasonable action to commence to cure the performance concerns specified. If breaching party does not take appropriate action within the ten (10) day period, then the terminating party may issue a Final Notice to Cure. The breaching party will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the terminating party can terminate the License.

Notwithstanding the foregoing, City may immediately terminate this License, without providing

Licensee with notice of default or opportunity to cure, if City determines that Licensee has failed to comply with any of the terms and conditions of this License related to safety, indemnification, or insurance coverage.

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

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

In the event this License is terminated for cause and the City is the terminating party, any monies due from Licensee during the term of this License or any extension thereof, shall, at the option of the City, become immediately due and payable in full. Following termination, the City may immediately retake full possession of the Premises and repair or alter the Premises in such manner as City may deem necessary or advisable to re-license the Premises. Should City need to repair or alter the Premises in such a manner, City shall be entitled to recover damages.

18. INSURANCE. Licensee, at its sole cost and expense, shall cause to be maintained during the term of this Agreement, insurance as follows:

- a. **Workers Compensation:** Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.
- b. **Comprehensive General Liability (CGLI):** CGLI coverage with limits not less than \$2,000,000.00 each occurrence or CGLI with limits not less than \$1,000,000.00 each occurrence and Umbrella Insurance in excess of the CGLI of not less than \$1,000,000.00. Such policies shall include product liability coverage and such coverage shall be noted on the Certificate of Insurance. If such policies do not include product liability coverage, Licensee shall maintain Products Liability coverage with limits not less than \$2,000,000.00.

Said policies shall name the City as an additional insured. Licensee shall provide proof of this insurance to the City within ten (10) days after the signing of this License by the Parties.

19. WAIVER OF SUBROGATION. Licensee releases the City and their respective representatives from any claims for damage that are caused by or result from risks insured against under any insurance policies required to be carried by the Licensee under this License. Licensee agrees to cause the issuers of the insurance policies required to be maintained hereunder to include waivers of the rights of recovery and subrogation.

20. PERSONAL PROPERTY LIABILITY. All property of any kind that may be on Premises during the term of License shall be at the sole risk of Licensee and City shall not be liable to Licensee or any other person for any injury, loss, or damage to property or to any person on said Premises.

- 21. ASSIGNMENT AND SUBLICENSING.** Licensee shall not assign, sublet, or in any manner transfer this License or any portion hereof without the express written consent of the City, however Licensee may assign this License to a successor by merger, to an entity that acquires substantially all of Licensee's assets, or to an affiliate that controls, is controlled by, or is under common control with Licensee without City's consent.
- 22. INDEMNIFICATION.** To the extent permitted by law, Licensee, hereby releases and waives all claims against the City of Kissimmee, its officers, employees, agents, independent Contractors for any injury or damage to the person, property, or business of Licensee, its agents, employees, or other persons, for which injury or damage results from any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Notwithstanding, nothing in this License shall be construed as a waiver by the City of its right to statutory sovereign immunity pursuant to Florida Statute §768.28. Licensee agrees to indemnify and hold harmless the City, its agents, officers, employees, against any and all claims, demand, cost, and expenses of every kind and nature including reasonable attorney's fees and for the enforcement, defense, or appeals thereof arising from Licensee's performance of the License or any breach or default of Licensee.
- 23. CONDEMNATION.** If the whole or any part of the Premises shall be taken by any public authority by eminent domain, then the term of this License shall cease on the part so taken from the day the possession of that part shall be required for any public purpose, and any applicable fees shall be paid up to that day, and if such portion of the Premises is so taken as to destroy the usefulness of the Premises for the purpose for which the Premises were licensed, then, from that day Licensee shall have the right either to terminate this License or to continue in possession of the remainder under the same terms provided in this License, except the rental fee shall be reduced in proportion to the amount of the Premises taken. If Licensee shall fail to terminate this License within thirty (30) days after notice of said taking, said failure shall be regarded as a waiver of its right to cancel, and this License shall continue for the remainder of the term. If Licensee exercises its right to cancel, all advanced fees paid by Licensee shall be adjusted to the date of said taking. If Licensee fails to exercise its right to cancel, Licensee shall, at its own cost and expense, make the repairs made necessary resulting from said partial taking. Licensee shall receive notice of the commencement of condemnation proceedings within thirty (30) days of the City's notice of their initiation if commenced by a third party, or within thirty (30) days of their initiation if commenced by the City.
- 24. DESTRUCTION OF PREMISES.** If the Premises shall, without fault of Licensee, be destroyed by fire, storm, or other casualty or be so damaged thereby as to become wholly or partially untenable, City may, by written notice delivered to Licensee within thirty (30) days after such destruction or damage, elect to rebuild or repair Premises. In such event, this License shall remain in force, and City shall rebuild or repair the Premises within a reasonable time after such election, putting the Premises in as good a condition as they were at the time immediately prior to the destruction or damage. For that purpose, City may enter the Premises, and rent shall abate during the time the Premises are untenable. If City elects not to restore or rebuild, Licensee may terminate this License. If either party so elects, this License shall terminate effective the date of said destruction.
- 25. BREACH.** Failure of Licensee or the City to perform the covenants, conditions, or provisions of the License shall constitute a material default and breach of the Licensee. In the event of any default, the City or the Licensee has the right to seek termination of this License in accordance with the provisions of the Termination for Cause Section above.
- 26. NOTICE.** Any and all notices required by this agreement shall be in writing and either hand delivered

or, if sent by U.S. Mail or overnight delivery shall be addressed as follows:

City of Kissimmee Steve L. Lackey Parks and Recreation 101 Church Street, Suite 330 Kissimmee, FL 34741	Licensee Gulfstream Catering Inc P.O. Box 450547 Kissimmee, FL 34745-0547
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Either party may change, by written notice as provided herein, the addresses or person for receipt of notices. All notices and other communications given pursuant to this Licensee to be served, given, or delivered upon either party shall be in writing and shall be sent by registered mail, or return receipt, or by a national overnight receipt delivery service (e.g., Federal Express). Such notices shall be deemed served, given, and delivered on the earlier of the following: (1) the date of actual receipt; (2) the fifth (5th) business day after any registered or certified notice was deposited in a sealed envelope in the U.S. mail, postage prepaid; (3) the next business day after any notice was delivered (on a business day to a receipted overnight delivery service of said notice accepted same).

- 27. WAIVER.** No failure of the City to insist upon strict performance in any one or more terms of this License, nor any failure of the City to exercise any right or remedy under this License shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance.
- 28. HEADINGS AND CAPTIONS.** All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement and may not be used to define, describe, interpret or construe any provision of this Agreement.
- 29. AMENDMENTS.** This Agreement may be altered, amended, extended, modified and/or revised only by a written instrument subsequently executed by the parties to this Agreement.
- 30. SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.
- 31. ATTACHMENTS.** Attachments to this License shall be deemed to be incorporated into this License as if fully set forth verbatim into the body of this License.
- 32. NO THIRD PARTIES BENEFICIARIES.** This License shall inure to the benefit of the Parties to this License and is for the exclusive benefit of said Parties. This License shall not be deemed to be made for the benefit of any other entity or person not so specified, including specifically but not limited to the selected Licensee.
- 33. RELATIONSHIP OF THE PARTIES; CONSTRUCTION OF LICENSE.** Nothing contained herein shall be deemed or construed as creating a principal and agent relationship or a joint venture between the Parties. The Parties understand and agree that neither the method of computation of rent,

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives have executed this License effective the 1 day of Nov, 2022.

Licensee:

By: Rick Crawford

WITNESS AS TO LICENSEE:

By: Dorothy Eder

CITY OF KISSIMMEE

By: _____
Mayor - Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legal sufficiency:

Olga Sanchez de Fuentes, City Attorney

RFP 2023-002**Exhibit A****LIST OF THREE BUSINESS REFERENCES**

#1	Agency	Heritage Christian Academy
Address		1500 East Vine Street
City, State, ZIP		Kissimmee, FL 34744
Contact Person		Al Cotto
Telephone / Fax		(407)847-4087 ext 1748
Email		Unavailable
Date(s) of Service		2006 to present
Type of Service		Weekly Fresh Pizza Delivery
Comments:		None
#2	Agency	Freedomland Christian Academy
Address		1210 North Main Street
City, State, ZIP		Kissimmee, FL 34744
Contact Person		Laura
Telephone / Fax		(407)970-5861
Email		Unavailable
Date(s) of Service		2015 to present
Type of Service		Weekly Fresh Pizza Delivery
Comments:		None
#3	Agency	Dreaming Big Learning Center
Address		3301 West Oak Street
City, State, ZIP		Kissimmee, FL 34741
Contact Person		Eric
Telephone / Fax		(407)334-6236
Email		Unavailable
Date(s) of Service		2019 to present
Type of Service		Weekly Fresh Pizza Delivery
Comments:		None

ServSafe® CERTIFICATION

RICK CRAWFORD

for successfully completing the standards set forth for the ServSafe® Food Protection Manager Certification Examination, which is accredited by the American National Standards Institute (ANSI)-Conference for Food Protection (CFP).



#0655

21472962

CERTIFICATE NUMBER

12/27/2021

DATE OF EXAMINATION
Local laws apply. Check with your local regulatory agency for recertification requirements.

Sherman Brown
Sherman Brown
Executive Vice President, National Restaurant Association Solutions

10763

EXAM FORM NUMBER

12/27/2026

DATE OF EXPIRATION





Fortune Road Athletic Complex - Menu

<u>Item</u>	<u>Price</u>
<u>Morning Events Food</u>	
Breakfast Sandwich	\$3.75
Breakfast Burrito	\$4.00
Biscuits & Gravy	\$4.50
Bagel	\$3.00
Muffin	\$2.75
Fresh Fruit	\$1.25

<u>Afternoon / Evening Events Food</u>	
Beef Hot Dog	\$3.25
Quarter Pound Angus Beef Hamburger	\$7.00
Chicken Sandwich	\$6.75
Whole Personal Pan (Cheese / Pepperoni)	\$6.50
Ham & Cheese or Turkey & Cheese	\$6.75
Chicken Salad Sandwich	\$6.75
Nachos w/cheese	\$4.00
Extra Cheese Cup	\$0.75
Chicken Nuggets	\$3.75
Pretzel	\$4.00
Chef Salad	\$6.75

<u>Snacks</u>	
Assorted Candy	\$2.00
Chips	\$1.75
Fresh Baked Cookies (2)	\$1.25
Fresh Baked Cookies (1)	\$0.75
Jumbo Dill Pickles	\$1.25
Icee Pops (3)	\$1.00
Fruit Cup (in season)	\$1.50
Fresh Fruit	\$1.25

<u>Drinks</u>	
Soda (Coke Products)	\$2.75
Sports Drinks (Gatorade)	\$3.25
Bottled Water	\$2.75
Coffee (all day)	\$2.75
Hot Chocolate	\$2.75
Frozen Smoothies	\$4.00
Lemonade / Ice Tea 16 oz	\$1.50
Lemonade / Ice Tea Jumbo	\$3.00
Juice Box (when available)	\$1.25
Juice Bottle (when available)	\$1.75
Monster & Red Bull	\$4.00
Cup of Ice	\$0.75

RFP 2023-002

Exhibit D

Alcoholic Beverages - (served during appropriate events)

Budweiser	\$3.00
Bud Light	\$4.00
Taino	\$2.50
Michelob Ultra	\$3.00
Yuengling	\$3.00

All items listed are single serve items

All menu items may be adjusted due to seasonality, availability, demand or requests by the city of Kissimmee

Bob Makinson Aquatic Center - Menu

<u>Item</u>	<u>Price</u>
<u>Food</u>	
Hot Dog	\$3.25
Hamburger	\$6.50
Cheeseburger	\$6.50
Pizza	\$3.50
Nachos	\$4.00
Pretzel	\$4.00
Nacho Cheese	\$0.75

Snacks and Ice Cream

Small Cones	\$3.25
Large Cones	\$3.75
Sprinkles	\$0.50
Small Sundae	\$4.25
Large Sundae	\$4.75
Candy	\$0.50
Candy	\$1.00
Candy	\$2.00
Chips	\$1.75

Drinks

Small Soda	\$2.00
Medium Soda	\$2.25
Large Soda	\$3.25
Sport Drink (Gatorade)	\$3.25
Water	\$2.00
Small Slush	\$2.50
Large Slush	\$3.00
Frozen Lemonade	\$3.25
Juice Box	\$1.25
Milkshake	\$4.50
Floats	\$4.50

Birthday Party Packages

Birthday party packages are available based on a per person charge and level of event ranging from \$7.50 - \$15.00 per person.

Available Options

- | | |
|--|---------------|
| - Private Party Area | Food |
| - Drinks | Birthday Cake |
| - Ice Cream | Party Favors |
| - Clown / Balloon Twister / Face Painter | |

All parties include party paper goods.

All items listed are single serve items

All menu items may be adjusted due to seasonality, availability, demand or requests by the city of Kissimmee



2022 Florida Annual Resale Certificate for Sales Tax

This Certificate Expires on December 31, 2022

Business Name and Location Address

Certificate Number

GULFSTREAM CATERING INC
1400 E VINE ST STE F
KISSIMMEE, FL 34744-3663

59-8016124536-6

By extending this certificate or the certificate number to a selling dealer to make eligible purchases of taxable property or services exempt from sales tax and discretionary sales surtax, the person or business named above certifies that the taxable property or services purchased or rented will be resold or re-rented for one or more of the following purposes:

- Resale as tangible personal property
- Re-rental as tangible personal property
- Resale of services
- Re-rental as commercial real property
- Incorporation into tangible personal property being repaired
- Re-rental as transient rental property
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing

Your *Florida Annual Resale Certificate for Sales Tax* (Annual Resale Certificate) allows you or your representatives to buy or rent property or services tax exempt when the property or service is resold or re-rented. You **may not** use your Annual Resale Certificate to make tax-exempt purchases or rentals of property or services that will be used by your business or for personal purposes. Florida law provides for criminal and civil penalties for fraudulent use of an Annual Resale Certificate.

As a seller, you must document each tax-exempt sale for resale using one of three methods. You can use a different method each time you make a tax-exempt sale for resale.

1. Obtain a copy (paper or electronic) of your customer's current Annual Resale Certificate.
2. For each sale, obtain a transaction authorization number using your customer's Annual Resale Certificate number.
3. Each calendar year, obtain annual vendor authorization numbers for your regular customers using their Annual Resale Certificate numbers.

Online: Visit floridarevenue.com/taxes/certificates

Phone: 877-357-3725 and enter your customer's Annual Resale Certificate number

Mobile App: Available for iPhone, iPad, and Android devices



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



RFP 2023-002

Exhibit G

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DIVISION OF HOTELS AND RESTAURANTS

THE CATERER (2013) HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 509, FLORIDA STATUTES

GULFSTREAM CATERING INC

GULFSTREAM CATERING INC

1400 E VINE ST

KISSIMMEE

FL 34744

LICENSE NUMBER: CAT5910736

EXPIRATION DATE: APRIL 1, 2023

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

RFP 2023-002
Exhibit H

REQUIRED BACKGROUND CHECKS

Subject to, and to the extent permitted by applicable law, if at any time the CITY finds that the CONCESSIONAIRE's staff are unsatisfactory, and such causes and reasons are duly reported in writing by CITY to CONCESSIONAIRE, the CONCESSIONAIRE shall, within ten (10) days, unless specifically extended in writing by CITY, replace that staff member. CITY must give appropriate nondiscriminatory rationale for the request of personnel change.

RFP 2023-002
Exhibit I

DRUG FREE WORKPLACE

Gulfstream Catering, Inc., currently and for the past nine years has operated a Drug Free Workplace in compliance with the attached requirements. The following are the poster and certification forms currently utilized in our business.



GULFSTREAM CATERING, INC
P.O. BOX 450547
KISSIMMEE, FL 34745-0547
PHONE: 407-933-4333

A DRUG FREE WORKPLACE

This statement provides notification to all employees of Gulfstream Catering, Inc. is a Drug Free Workplace. It is unlawful and prohibited to manufacture, distribute, dispense, possess or use controlled substance in the workplace. Any person violating this policy may be terminated and prosecuted under state and federal laws.

It is not our policy to provide counseling or to rehabilitate offenders of this policy, however Gulfstream Catering will provide any assistance required as an employer under state and federal laws.

All employees are required to adhere to this policy in the strictest terms. All employees will notify the employer of any conviction, or plea of guilty or nolo contendere to, any violation of chapter 893 or any controlled substance law of the United States or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

If convicted under the law you may be required to successfully participate in a drug abuse assistance or rehabilitation program if such is available in the community.

As an employee of Gulfstream Catering Inc. I understand and agree to comply with this Drug Free Workplace policy.



GULFSTREAM CATERING, INC
P.O. BOX 450547
KISSIMMEE, FL 34745-0547
PHONE: 407-933-4333

**DRUG FREE WORKPLACE
CERTIFICATION FORM**

This statement provides notification to all employees of Gulfstream Catering, Inc. This business is a Drug Free Workplace. It is unlawful and prohibited to manufacture, distribute, dispense, possess or use controlled substance in the workplace. Any person violating this policy may be terminated and prosecuted under state and federal laws.

It is not our policy to provide counseling or to rehabilitate offenders of this policy, however Gulfstream Catering, Inc., will provide any assistance required as an employer under state and federal laws.

All employees are required to adhere to this policy in the strictest terms. All employees will notify the employer of any conviction, or plea of guilty or nolo contendere to, any violation of chapter 893 or any controlled substance law of the United States or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

If convicted under the law you may be required to successfully participate in a drug abuse assistance or rehabilitation program if such is available in the community.

As an employee of Gulfstream Catering Inc., I understand and agree to comply with this Drug Free Workplace policy.

Employee Signature

Date

RFP 2023-002
Exhibit J

GULFSTREAM CATERING

**This is to acknowledge that I did receive the addendum number 1
and that I agree to the terms of the addendum.**


Rick Crawford

RFP 2023-002

Exhibit J

GULFSTREAM CATERING

**This is to acknowledge that I did receive the addendum number 2
and that I agree to the terms of the addendum.**

A handwritten signature in black ink, appearing to read "Rick Crawford", is written over a horizontal line.

Rick Crawford

**CONCESSION LICENSE
FOR FOOD, BEVERAGES, ALCOHOL AND NOVELTY ITEMS
AT FORTUNE ROAD ATHLETIC COMPLEX
AND BOB MAKINSON AQUATIC CENTER**

THIS LICENSE is made and entered into this _____ day of _____, 2023, by and between the City of Kissimmee, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, (hereinafter referred to as the “City”), and Gulfstream Catering Inc, whose business address is P.O Box 450547, Kissimmee, Florida, 34745, a Florida corporation, (hereafter referred to as “Licensee”), together referred to as the “Parties,” and each represent as follows:

WITNESSETH:

WHEREAS, after soliciting proposals for provision of food, beverage, alcohol and novelty items concessions at the City-owned Fortune Road Athletic Complex and Bob Makinson Aquatic Center pursuant to City of Kissimmee Request for Proposal No. RFP2023-002, (hereinafter referred to as “RFP”), City has awarded this License to Licensee; and

WHEREAS, Licensee has represented that it is able to satisfactorily provide the services according to the terms and conditions of the RFP; and

NOW, THEREFORE, in consideration of the above recitals, mutual covenants, agreements, terms, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. **PREMISES.** City hereby grants Licensee an exclusive license to the following properties (hereinafter “Premises”):
 - a. The concession space located at the Fortune Road Athletic Complex, 2500 Fortune Road, Kissimmee, FL 34744.
 - b. The concession space located at the Bob Makinson Aquatic Center, 2204 Denn John Lane, Kissimmee, FL 34744.
2. **TERM.** This License shall be for an initial period of thirty-six (36) months, commencing on the 1st day of January, 2023. The Parties may renew the License for up to two (2) additional twelve (12) month periods by written agreement. The City Manager or the City Manger’s designee may approve such renewals on behalf of the City.
3. **RENTAL.** Licensee shall pay to the City on or before the 10th day of each month pay 20% of all gross sales, excluding sales of alcohol, and 25% of gross alcohol sales no for the preceding month, without demand, deduction, setoff or abatement. All payments shall be made timely or may be subject to a late penalty in the amount of 1% of the fee due for each day the payment is late. If payments and applicable penalties are not received within fifteen (15) days of the payment due date, then City may cancel this License and begin procedures to collect fees. The late fee is applicable for each and every payment which is past due.
4. **USE.** Licensee agrees to provide food, beverage, alcohol and novelty item concessions services at Premises during the Hours of Operation section below for the entire term of this License, unless prevented from doing so by causes beyond Licensee’s control, and to conduct its business at all times in a reputable manner. Licensee shall acquire and maintain all licenses and permits necessary to perform

the activities specified in the Scope of Work. Licensee shall make no unlawful, improper or offensive use of Premises. All rights of License hereunder may be terminated by the City immediately in the event that any other use be made thereof. Sample concession menus for each premise are attached as shown in Exhibit "A". Licensee agrees that Licensee shall provide substantially the same quantity and quality of concession offerings as provided in Exhibit "A", in the sole opinion of the City, during the term of this License.

5. **POSSESSION.** Licensee shall be granted possession of the Premises immediately upon the commencement date of this License and shall be entitled to the full use of Premises. All terms and conditions set forth herein shall immediately commence upon the signing of this License by the Parties. Upon expiration or termination of this License, Licensee shall surrender and yield possession of the Premises to the City, peacefully and without notice, and in good order and condition, but subject to ordinary wear and reasonable use and damage or destruction beyond Licensee's control and not due to the Licensee or it's employees' fault or negligence. If the Premises are unreasonably damaged, then the City shall demand reimbursement from Licensee within ten (10) days of termination or expiration and Licensee shall make such payment within ten (10) days of receipt of said demand.
6. **ALCOHOLIC BEVERAGES.** The sale of any alcoholic beverages may be allowed in accordance with local and state law.
7. **HOURS OF OPERATION.** The Hours of Operation at Fortune Road Athletic Complex vary based upon the scheduling of events and league games and activities. The Hours of Operation at Fortune Road Athletic Complex are 30 minutes prior to the start of the event or first league game or activity of the day until the conclusion of the event or the conclusion of the last league game or activity of the day. The City shall provide Licensee notice of the Fortune Road Athletics Complex scheduling of events and league games or activities on or before the 14th day before the event or the start of the league's schedule. The Hours of Operation at the Bob Makinson Aquatic Center are seasonal. The City shall provide Licensee notice of the Hours of Operation and the schedule of the operating season at Bob Makinson Aquatic Center on or before the 30th day before the beginning of its operating season. Licensee shall provide food, beverage, alcohol and novelty items concessions during the Hours of Operation of the Premises except upon closure of either premise due to inclement weather or other unforeseen circumstances.
8. **TAXES, FEES AND ASSESSMENTS.** If any rental, sales or similar taxes, fees, or special assessments are levied upon the Premises due to the existence of this License, then Licensee shall pay all such taxes so imposed.
9. **UTILITIES.** City shall procure and pay for electricity, water, and refuse disposal (hereinafter "Utilities") related to providing concession operations at Premises. City cannot guarantee the uninterrupted service of the Utilities provided for the concession operations. City shall not be liable in any manner for damages to Licensee's business and/or inventory, or for any other claim by Licensee, resulting from any interruption in utility service, unless such interruption was caused by the sole negligence of the City. Licensee shall pay for all other utilities to include internet, telecommunications, television, and security services. Licensee may provide for any security equipment or measures to protect the Premises, equipment, and inventory subject to the written approval of the City.
10. **SANITATION.** Licensee shall maintain the premises in a clean, orderly, and sanitary condition as required by the hygiene codes and standards of the Florida Departments of Business and Professional (DBPR), Agriculture and Consumer Services (DACS) Regulations, and Health (DOH) regulations. Licensee shall be responsible for all housekeeping and sanitation services in the retail, food preparation, food storage, dining, and serving areas of the Premises to include cleaning dining furniture, floors, walls up to six (6) feet above floor level, and the exterior of hoods, ducts, vents, and other equipment and fixtures used by Licensee in food storage and preparation areas. Licensee shall collect and properly

package dry refuse from the Premises and place the packed refuse at the site(s) on Premises designated by City for refuse collection.

- 11. MAINTENANCE AND SERVICES.** City is responsible for performing preventative and corrective maintenance on facility infrastructure equipment and systems supporting the food service areas, such as, electric power distribution, lighting, HVAC, plumbing, roofing, fire alarm, fire protection, and grease trap maintenance. City shall have the right to enter upon the Premises for the purpose of inspecting, conducting tests, or for making repairs to the Premises or to any property owned or controlled by the City therein. If feasible, such repairs shall not unduly interfere with Licensee's business. City shall maintain, clean, and stocked public restrooms attached to the Premises. Licensee shall comply with all City policies and standards regarding facility infrastructure. Licensee shall maintain the Premises in good repair and in a clean, neat, orderly, and sanitary condition.

City shall inspect the Premises on an annual basis to determine any maintenance needs and operational deficiencies. Such inspections shall be performed by the Facility Management Division, in cooperation with the Parks and Recreation Department, and Licensee may participate in the inspections. A copy of inspections reports shall be maintained by the Facility Management Division and available for review by Licensee, if requested. To the extent the inspection determines certain maintenance is required, City is only responsible for those items which are considered part of the building or City-owned food service equipment or other obligations as set forth in this License.

Licensee shall permit inspection of the Premises by any county, state, or federal regulatory agency. Licensee shall notify the City, in writing, within five (5) working days of any notice, inspection, investigation, claim, demand, lawsuit, or other action by any county, state, or federal regulatory agency involving the Premises. The City may be present during any inspection by any local, state, or federal regulatory agency.

Licensee shall provide City with prompt written notice of any structural defects, maintenance problems beyond the scope of Licensee's responsibility or the need of the aforementioned structural repairs or replacements within twenty-four (24) hours. Licensee shall be responsible for any such repairs described in this paragraph if resulting from the negligent acts or omissions of Licensee, its agents, employees, invitees, licensees, customers, or clients.

In the event City pays any monies required to be paid by Licensee hereunder, City shall demand repayment of same from Licensee within ten (10) days of payment and Licensee shall make such payment within ten (10) days of receipt of said demand. Licensee's failure to timely reimburse shall be deemed a breach of this License.

- 12. EQUIPMENT.** The City owns certain equipment at the Premises including cash registers that may be used by Licensee. Licensee shall reconcile all currency deposited into cash registers or received by credit or debit card transactions after the end of Hours of Operation on each day concession operations take place. The City and the Licensee shall jointly approve a basic inventory listing all City-owned property at the Premises which may be used by Licensee (hereinafter "inventory") within ten (10) days after the signing of this License by the Parties. The inventory may be modified in writing with the approval of the Parties. Upon expiration of the term and any additional terms under this License, the Parties shall audit the inventory to verify its correctness. Licensee shall exercise reasonable care, including but not limited to taking necessary efforts to maintain, all equipment listed on the inventory. Upon expiration or termination of this License, Licensee shall surrender and yield possession of all items listed on the inventory to the City, peacefully and without notice, and in good order and condition, but subject to ordinary wear and reasonable use and damage or destruction beyond Licensee's control and not due to the Licensee or it's employees' fault or negligence. If any items listed on the inventory are missing or unreasonably damaged, then the City shall demand reimbursement from Licensee within

ten (10) days of termination or expiration and Licensee shall make such payment within ten (10) days of receipt of said demand.

13. **SIGNS.** Licensee agrees that any signs, brochures, menu boards, advertising, or print material to be used in connection with the Premises must have the City's written approval before installation or dissemination. Licensee may, at its own expense and subject to the City's written approval prior to installation, post the name of the business operation, hours of operation, and telephone number on the entrance doors of Premises.
14. **BACKGROUND CHECKS.** A Level 2 employment screening check is required for all employees with access to Premises (hereinafter "Employees") pursuant to the Florida Employment Screening Standards, Section 435.04, Florida Statutes. Licensee shall provide the full name, driver's license number if applicable, and social security number for all Employees to the City. The City shall obtain A Level 2 employment screening for all Employee. The City shall invoice Licensee for the cost of mandatory employment screening checks for all Employees and Licensee shall reimburse the City for such costs. The City, at its sole discretion, may determine that an individual is ineligible to work on the Premises.
15. **MODIFICATIONS TO PREMISES.** City grants Licensee the use of Premises "as is." Licensee shall not make any structural modifications, alterations, improvements, or additions in or to the Premises, or install any equipment of any kind that will require any alteration or addition to, or use of the water, heating, air-conditioning or electrical or other building systems or equipment, without the prior written approval by the City and only in accordance with local, state, and federal permitting regulations. Licensee shall pay for all charges for labor, services, and materials used in connection with any improvements or repairs to Premises undertaken by Licensee. All such additions, improvements, and fixtures, except movable furniture, shall become property of the City and remain upon the Premises and be surrendered to the City at the end of the License.

Licensee shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion or other estate of the City in the Premises or on the building or other improvements thereon, and Licensee shall notify all materialmen, contractors, artisans, mechanics and laborers and other person contracting with Licensee with respect to Premises or any part thereof that they must look to Licensee to secure payment of any bill for work done or material furnished or for any other purpose during the term of this License.

In the event of the filing of any Claim of Lien, Licensee shall promptly satisfy same or transfer it to a bond, and Licensee shall in any event protect the City's interest in underlying real estate and shall hold the City harmless against any such claims.

16. **TERMINATION FOR CONVENIENCE.** This License may be terminated either party, with or without cause, for any reason whatsoever, upon ninety (90) calendar days' written notice.
17. **TERMINATION FOR CAUSE.** If either party wishes to terminate this License for cause (hereinafter "terminating party") due to a breach of this License by the other party (hereinafter "breaching party"), then the terminating party must provide the breaching party with written notice of said failure to perform. The terminating party must give ten (10) working days from the breaching party's receipt of the Notice to Cure for the breaching party to cure or take reasonable action to commence to cure the performance concerns specified. If breaching party does not take appropriate action within the ten (10) day period, then the terminating party may issue a Final Notice to Cure. The breaching party will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the terminating party can terminate the License.

Notwithstanding the foregoing, City may immediately terminate this License, without providing

Licensee with notice of default or opportunity to cure, if City determines that Licensee has failed to comply with any of the terms and conditions of this License related to safety, indemnification, or insurance coverage.

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

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

In the event this License is terminated for cause and the City is the terminating party, any monies due from Licensee during the term of this License or any extension thereof, shall, at the option of the City, become immediately due and payable in full. Following termination, the City may immediately retake full possession of the Premises and repair or alter the Premises in such manner as City may deem necessary or advisable to re-license the Premises. Should City need to repair or alter the Premises in such a manner, City shall be entitled to recover damages.

18. INSURANCE. Licensee, at its sole cost and expense, shall cause to be maintained during the term of this Agreement, insurance as follows:

- a. **Workers Compensation:** Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.
- b. **Comprehensive General Liability (CGLI):** CGLI coverage with limits not less than \$2,000,000.00 each occurrence or CGLI with limits not less than \$1,000,000.00 each occurrence and Umbrella Insurance in excess of the CGLI of not less than \$1,000,000.00. Such policies shall include product liability coverage and such coverage shall be noted on the Certificate of Insurance. If such policies do not include product liability coverage, Licensee shall maintain Products Liability coverage with limits not less than \$2,000,000.00.

Said policies shall name the City as an additional insured. Licensee shall provide proof of this insurance to the City within ten (10) days after the signing of this License by the Parties.

19. WAIVER OF SUBROGATION. Licensee releases the City and their respective representatives from any claims for damage that are caused by or result from risks insured against under any insurance policies required to be carried by the Licensee under this License. Licensee agrees to cause the issuers of the insurance policies required to be maintained hereunder to include waivers of the rights of recovery and subrogation.

20. PERSONAL PROPERTY LIABILITY. All property of any kind that may be on Premises during the term of License shall be at the sole risk of Licensee and City shall not be liable to Licensee or any other person for any injury, loss, or damage to property or to any person on said Premises.

- 21. ASSIGNMENT AND SUBLICENSING.** Licensee shall not assign, sublet, or in any manner transfer this License or any portion hereof without the express written consent of the City, however Licensee may assign this License to a successor by merger, to an entity that acquires substantially all of Licensee's assets, or to an affiliate that controls, is controlled by, or is under common control with Licensee without City's consent.
- 22. INDEMNIFICATION.** To the extent permitted by law, Licensee, hereby releases and waives all claims against the City of Kissimmee, its officers, employees, agents, independent Contractors for any injury or damage to the person, property, or business of Licensee, its agents, employees, or other persons, for which injury or damage results from any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Notwithstanding, nothing in this License shall be construed as a waiver by the City of its right to statutory sovereign immunity pursuant to Florida Statute §768.28. Licensee agrees to indemnify and hold harmless the City, its agents, officers, employees, against any and all claims, demand, cost, and expenses of every kind and nature including reasonable attorney's fees and for the enforcement, defense, or appeals thereof arising from Licensee's performance of the License or any breach or default of Licensee.
- 23. CONDEMNATION.** If the whole or any part of the Premises shall be taken by any public authority by eminent domain, then the term of this License shall cease on the part so taken from the day the possession of that part shall be required for any public purpose, and any applicable fees shall be paid up to that day, and if such portion of the Premises is so taken as to destroy the usefulness of the Premises for the purpose for which the Premises were licensed, then, from that day Licensee shall have the right either to terminate this License or to continue in possession of the remainder under the same terms provided in this License, except the rental fee shall be reduced in proportion to the amount of the Premises taken. If Licensee shall fail to terminate this License within thirty (30) days after notice of said taking, said failure shall be regarded as a waiver of its right to cancel, and this License shall continue for the remainder of the term. If Licensee exercises its right to cancel, all advanced fees paid by Licensee shall be adjusted to the date of said taking. If Licensee fails to exercise its right to cancel, Licensee shall, at its own cost and expense, make the repairs made necessary resulting from said partial taking. Licensee shall receive notice of the commencement of condemnation proceedings within thirty (30) days of the City's notice of their initiation if commenced by a third party, or within thirty (30) days of their initiation if commenced by the City.
- 24. DESTRUCTION OF PREMISES.** If the Premises shall, without fault of Licensee, be destroyed by fire, storm, or other casualty or be so damaged thereby as to become wholly or partially untenable, City may, by written notice delivered to Licensee within thirty (30) days after such destruction or damage, elect to rebuild or repair Premises. In such event, this License shall remain in force, and City shall rebuild or repair the Premises within a reasonable time after such election, putting the Premises in as good a condition as they were at the time immediately prior to the destruction or damage. For that purpose, City may enter the Premises, and rent shall abate during the time the Premises are untenable. If City elects not to restore or rebuild, Licensee may terminate this License. If either party so elects, this License shall terminate effective the date of said destruction.
- 25. BREACH.** Failure of Licensee or the City to perform the covenants, conditions, or provisions of the License shall constitute a material default and breach of the Licensee. In the event of any default, the City or the Licensee has the right to seek termination of this License in accordance with the provisions of the Termination for Cause Section above.
- 26. NOTICE.** Any and all notices required by this agreement shall be in writing and either hand delivered

or, if sent by U.S. Mail or overnight delivery shall be addressed as follows:

City of Kissimmee Steve L. Lackey Parks and Recreation 101 Church Street, Suite 330 Kissimmee, FL 34741	Licensee Rick Crawford Gulfstream Catering Inc P.O Box 450547 Kissimmee, FL 34741
--	--

Either party may change, by written notice as provided herein, the addresses or person for receipt of notices. All notices and other communications given pursuant to this Licensee to be served, given, or delivered upon either party shall be in writing and shall be sent by registered mail, or return receipt, or by a national overnight receipt delivery service (e.g., Federal Express). Such notices shall be deemed served, given, and delivered on the earlier of the following: (1) the date of actual receipt; (2) the fifth (5th) business day after any registered or certified notice was deposited in a sealed envelope in the U.S. mail, postage prepaid; (3) the next business day after any notice was delivered (on a business day to a receipted overnight delivery service of said notice accepted same).

- 27. WAIVER.** No failure of the City to insist upon strict performance in any one or more terms of this License, nor any failure of the City to exercise any right or remedy under this License shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance.
- 28. HEADINGS AND CAPTIONS.** All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement and may not be used to define, describe, interpret or construe any provision of this Agreement.
- 29. AMENDMENTS.** This Agreement may be altered, amended, extended, modified and/or revised only by a written instrument subsequently executed by the parties to this Agreement.
- 30. SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.
- 31. ATTACHMENTS.** Attachments to this License shall be deemed to be incorporated into this License as if fully set forth verbatim into the body of this License.
- 32. NO THIRD PARTIES BENEFICIARIES.** This License shall inure to the benefit of the Parties to this License and is for the exclusive benefit of said Parties. This License shall not be deemed to be made for the benefit of any other entity or person not so specified, including specifically but not limited to the selected Licensee.
- 33. RELATIONSHIP OF THE PARTIES; CONSTRUCTION OF LICENSE.** Nothing contained herein shall be deemed or construed as creating a principal and agent relationship or a joint venture between the Parties. The Parties understand and agree that neither the method of computation of rent,

nor any other provision contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of City and Licensee.

34. GOVERNING LAW. The laws of the State of Florida govern the validity, enforcement, and interpretation of this Agreement. Venue for any cause of action asserted by any party brought in State Court shall be in Osceola County. Venue for any action brought in Federal court shall be in the Middle District of Florida, Orlando Division.

35. COMPLIANCE WITH FEDERAL, STATE, COUNTY, AND LOCAL LAWS. The Parties shall comply with all Federal, State, County and local laws, regulations, ordinances, and health and safety rules and regulations at all times.

36. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

37. HAZARDOUS SUBSTANCES. Licensee shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on or in the Premises. Licensee shall not do, nor allow anyone else to do, anything affecting the Premises that is in violation of any environmental law or regulation. The preceding two sentences shall not apply to the presence, use, or storage on the Premises of small quantities of hazardous substances that are generally recognized to be appropriate to normal maintenance use. If Licensee learns or is notified by any governmental authority that any removal or other remediation of any hazardous substances affecting the Premises is necessary, Licensee shall promptly take all necessary remedial action in accordance with environmental law.

As used in this Paragraph, "hazardous substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph, "environmental law" means Federal laws and laws of the jurisdiction where the Premises is located that relate to health, safety, or environmental protection.

38. NO WAIVER OF SOVEREIGN IMMUNITY. Notwithstanding, nothing in this Agreement shall be construed as a waiver by the CITY of its rights to statutory sovereign immunity pursuant to Fla. Stat. §768.28.

39. WAIVER OF JURY TRIAL/AWARD OF ATTORNEY'S FEES. It is mutually agreed by and between the Parties that each of the Parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this License. In any such action, each party shall be responsible for their own attorney's fees, including those incurred in appellate proceedings.

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

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

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

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

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives have executed this License effective the ____ day of _____, 2023.

Licensee:

By: Ther Crawford

WITNESS AS TO LICENSEE:

By: Andrea Campbell
Andrea Campbell

CITY OF KISSIMMEE

By: _____
Mayor - Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legal sufficiency:

Olga Sanchez de Fuentes, City Attorney

EXHIBIT A
SAMPLE MENUS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/4/2023

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

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

PRODUCER Heacock Insurance 32313 Broadway St., Suite 200 Sebring FL 33870		CONTACT NAME: Sharon Wheeler PHONE (A/C, Ho, Ext): 863-385-5171 FAX (A/C, No): 863-385-4130 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: NorGUARD Insurance Company	
		INSURER B: Berkshire Hathaway Guard Insurance Companies	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1587751420 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	Y	Y	GUBP362291	3/13/2022	3/13/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	Y	Y	GUUM398032	3/13/2022	3/13/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☒ Y N/A		N	GUWC343100	3/13/2022	3/13/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Liquor Liability	Y	Y	GUBP362291	3/13/2022	3/13/2023	\$1,000,000

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

CERTIFICATE HOLDER

CANCELLATION

City of Kissimmee
101 Church St.
Kissimmee FL 34741

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

AUTHORIZED REPRESENTATIVE

Edward Chiswick

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ITEM 7.S

Transfer of Gas Tax Funds from Reserves for Road Materials and Supplies

Request

Approval to transfer funding from Gas Tax reserves to increase the FY 2022-2023 budget for road materials and supplies to continue funding the resurfacing projects that were approved in prior years.

Explanation

In the past, the Public Works and Engineering Department has requested to carry forward leftover funds from the prior year to continue funding resurfacing projects as a part of the annual carry forward process. The Public Works and Engineering Department did not make that request during the FY 2021-22 process; however, due to price constraints, the Engineering Division has identified several projects in need of those carryover funds. The projects are anticipated to be completed before September 30, 2023; therefore, staff is requesting to transfer leftover FY 2021-22 roads and materials funds that defaulted into Gas tax fund reserves, back out of reserves and into the FY 2022-23 budget.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10345650-509276		Decrease	\$1,047,581.21	
10345653-505353		Increase	\$1,047,581.21	

Financial Summary:

Transfer \$1,047,581 from Gas Tax fund reserves. These funds were unused monies in the FY 2021-22 Roads and Materials account.

Recommendation

Staff recommends Commission approval to transfer from Gas Tax Fund reserves into the Road Materials and Supplies account for FY2022 to FY2023.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering
Presenter: Mike Steigerwald

Attachment(s):

City of Kissimmee

1. Carrol St - Mill & Overlay Quote
2. Dyer Blvd - Mill & Overlay Quote (Ball park to Carrol)



DATE: 12/9/2022

TO: City of Kissimmee Public Works
2213 W. Mabette Street
Kissimmee, FL 34741
Attn: Nagel, Altrui

FROM: Asphalt Paving Systems, Inc.
8940 Gall Blvd
Zephyrhills, FL 33541
Ph: 813-788-0010
Fx: 813-788-0020

RE: W Carroll Street

City of Kissimmee Alternate Paving Methods

Item No	Description	Units	Quantity	Unit Price	Total Price
1	Mobilization	5%	1	\$ 18,885.65	\$ 18,885.65
3	Maintenance of Traffic	5%	1	\$ 18,885.65	\$ 18,885.65
63	Milling 2"	SY	13,760	\$ 5.94	\$ 81,734.40
80	Asphalt Concrete Type S-1	TON	1,515	\$ 155.00	\$ 234,825.00
154	6" Solid Traffic Stripe (paint) (white)	LF	4,130	\$ 0.81	\$ 3,345.30
157	6" Solid Traffic Stripe (paint) (yellow)	LF	4,330	\$ 0.81	\$ 3,507.30
165	24" Solid Traffic Stripe	LF	42	\$ 10.35	\$ 434.70
169	6" Skip Traffic Stripe	LF	2,600	\$ 1.73	\$ 4,498.00
173	Directional Arrows	EA	7	\$ 46.00	\$ 322.00
184	6" Solid Traffic Stripe (thermo) (white)	LF	4,130	\$ 2.30	\$ 9,499.00
187	6" Solid Traffic Stripe (thermo) (yellow)	LF	4,330	\$ 2.30	\$ 9,959.00
195	24" Solid Traffic Stripe (thermo)	LF	42	\$ 13.80	\$ 579.60
199	6" Skip Traffic Stripe (thermo)	LF	2,600	\$ 2.30	\$ 5,980.00
203	Directional Arrows (thermo)	EA	7	\$ 86.25	\$ 603.75
151	Reflective Pavement Markers (RPM's)	EA	3,900	\$ 5.75	\$ 22,425.00
	Prices include: Density testing, and tack coat.				
	Price does not include: base repair after milling, concrete repair, or utility adjustments.				
					\$ 415,484.36

Sincerely,

Mark Rohrbach

Mark Rohrbach
Estimator
Asphalt Paving Systems, Inc.



DATE: 12/9/2022

TO: City of Kissimmee Public Works
2213 W. Mabette Street
Kissimmee, FL 34741
Attn: Nagel, Altrui

FROM: Asphalt Paving Systems, Inc.
8940 Gall Blvd
Zephyrhills, FL 33541
Ph: 813-788-0010
Fx: 813-788-0020

RE: Dyer Blvd - Mill & Overlay

City of Kissimmee Alternate Paving Methods

Item No	Description	Units	Quantity	Unit Price	Total Price
1	Mobilization	5%	1	\$ 43,337.26	\$ 43,337.26
3	Maintenance of Traffic	5%	1	\$ 43,337.26	\$ 43,337.26
63	Milling 2"	SY	33,543	\$ 5.94	\$ 199,245.42
80	Asphalt Concrete Type S-1	TON	3,690	\$ 155.00	\$ 571,950.00
154	6" Solid Traffic Stripe (paint) (white)	LF	11,680	\$ 0.81	\$ 9,460.80
157	6" Solid Traffic Stripe (paint) (yellow)	LF	9,565	\$ 0.81	\$ 7,747.65
165	24" Solid Traffic Stripe	LF	500	\$ 10.35	\$ 5,175.00
169	6" Skip Traffic Stripe	LF	2,375	\$ 1.73	\$ 4,108.75
173	Directional Arrows	EA	30	\$ 46.00	\$ 1,380.00
176	Pavement Messages	EA	4	\$ 69.00	\$ 276.00
184	6" Solid Traffic Stripe (thermo) (white)	LF	11,680	\$ 2.30	\$ 26,864.00
187	6" Solid Traffic Stripe (thermo) (yellow)	LF	9,565	\$ 2.30	\$ 21,999.50
195	24" Solid Traffic Stripe (thermo)	LF	500	\$ 13.80	\$ 6,900.00
199	6" Skip Traffic Stripe (thermo)	LF	2,375	\$ 2.30	\$ 5,462.50
203	Directional Arrows (thermo)	EA	30	\$ 86.25	\$ 2,587.50
205	Pavement Messages (thermo)	EA	4	\$ 207.00	\$ 828.00
151	Reflective Pavement Markers (RPM's)	EA	480	\$ 5.75	\$ 2,760.00
	Prices include: Density testing, and tack coat.				
	Price does not include: base repair after milling, parking areas off roadway, concrete repair, or utility adjustments.				
					\$ 953,419.63

Sincerely,

Mark Rohrbach

Mark Rohrbach
Estimator
Asphalt Paving Systems, Inc.

ITEM 7.T

Road Resurfacing Task Work Order #1 for Dyer Boulevard Phase I and Carrol Street Project to Asphalt Paving Systems

Request

Approval to award the resurfacing, milling, and overlay of Dyer Boulevard Phase I and a portion of Carrol Street to Asphalt Paving Systems in the amount of \$1,368,903.99.

Explanation

On June 21st, 2022, the City advertised a request for proposals (IFB2022-002) for the purpose of selecting experienced and qualified companies to provide Asphalt Milling, Resurfacing, and Concrete Repair continuing services. Based on the approved vendor list, the City would like to award Asphalt Paving System Task Work Order #1 for the resurfacing of two roads selected from the pavement management program for the 2023 fiscal year.

The roads that will be resurfaced by milling and overlay will be Dyer Boulevard Phase I from Carrol Street to Ball Park Road at a cost of \$953,419.63 and a portion of Carrol Street from Thacker Avenue to a point 2,065 feet east of Thacker Avenue at a cost of \$415,484.36. The total project cost of both roads to be resurfaced is \$1,368,903.99.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10345653 505353		Decrease	\$1,922,581.21	\$1,368,904.00

Financial Summary:

Adequate funding will be available for this project subsequent to the approval of the Gas Tax reserves transfer.

Recommendation

Staff recommends approval to award Task Work Order #1 for the resurfacing, milling, and overlay of Dyer Boulevard Phase I and a portion of Carrol Street to Asphalt Paving Systems in the amount of \$1,368,903.99.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering
Presenter: Mike Steigerwald

City of Kissimmee

Attachment(s):

1. (S) Resurfacing Task Work Order #1
2. Asphalt Paving Systems Inc - Agreement
3. Dyer Blvd - Mill & Overlay Quote (Ball park to Carrol)
4. Carrol St - Mill & Overlay Quote



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

Work Order #: 1

Purchase Order#:

DATE: 12/7/2022

Per the terms, conditions, and specifications of the City of Kissimmee purchasing policies and procedures, this work order is issued to **Asphalt Paving System** with the following described work as agreed upon and are hereby accepted and incorporated:

DESCRIPTION OF ASSIGNMENT:

Resurface with mill and overlay method and replace pavement markings of Dyer Blvd phase 1 and Carroll St project.

FORM OF COMPLETED DELIVERABLES:

Dyer Blvd. Phase I and Carroll St. resurfaced roads

BASIS OF PAYMENT: Services shall be made on the basis of **Lump Sum** method in accordance with the Scope of Services, the total not to exceed **\$1,368,903.99** without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within **180** calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Dyer Blvd. Phase I (Carroll St. to Ball Park Rd.)	\$ 953,419.63
2) Carrol St. (Thacker Ave. to 2,065 ft east Thacker Ave.)	\$ 415,484.36
3)	
4)	
5)	
	\$ 1,368,903.99
Contract Dollars:	\$0.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$ 1,368,903.99

Accepted By: _____ (Signature)

Title/Position: **PRESIDENT**

City Engineer: _____ (Signature)

Approved By: _____ (Signature)

Director, PW&E

Requested By: **Nagel Altrui** (Signature)

Approved By: _____ (Signature)
City Manager

Approved By: _____ (Signature)
Mayor

City Commission Approval Date: _____ (If Required)

Approved as to Form and Legality:

City Attorney (Signature)

AGREEMENT between CITY OF KISSIMMEE

And

Asphalt Paving Systems, Inc.

THIS AGREEMENT is made this 21st day of June, 2022 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter "City" and Asphalt Paving Systems, Inc., whose business address is 9021 Wire Road, Zephyrhills, FL 33540, hereinafter "Contractor" and each represents as follows:

WITNESSETH

WHEREAS, City advertised IFB 2022-002 Annual Contract for Milling, Resurfacing and Minor Concrete Work, attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, Contractor provides milling, resurfacing and minor concrete work services and was the lowest responsive and responsible bidder, a copy of said bid response is attached hereto and incorporated herein as Exhibit "B"; and

WHEREAS, City desires to award IFB 2022-002 to Contractor consistent with the terms and conditions and requirements of the bid specifications.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and value considerations, the receipt and sufficiency of which I hereby acknowledged, each Party hereby promises to the other as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **SPECIFICATIONS.** Contractor agrees to perform miscellaneous alternative paving methods on an as-needed basis on City premises and facilities. Work may include, but not limited to, milling, resurfacing, striping, micro-surfacing, reclaimed asphalt paving, concrete work, and sodding.
3. **WORKMANSHIP and WARRANTY.** Contractor agrees to furnish all material, labor, equipment and tools necessary to provide the contracted services in accordance with the Exhibit "A", Exhibit "B", any and all change orders, and this Agreement. Contractor agrees to provide these services in a professional manner in accordance with the standards outlined Exhibit "A". Contractor shall supervise the performance of work by employees who shall present a favorable image for the City at all times when working on City property.
4. **TERM.** The term of this Agreement shall commence on the date of execution and terminate on September 20, 2025. This Agreement may, by mutual written consent of the Parties, be

extended for two (2) additional twelve-month periods. City reserves the right to cancel this Agreement without cause on any and all locations.

5. **PAYMENT.** Payments to Contractor shall be made only upon submission of proof of satisfactory completion of the services, or the increment(s) thereof, for which payment is made. Contractor shall provide at the post award conference a payment schedule for work phases. Payment prior to initiation of the project and receipt by the City for services for which payment is invoiced is strictly prohibited. A payment will be made based on proof of satisfactory completion of each cycle. The amount of each payment will be based upon final contract payment schedule. Invoices shall provide details of all project expenses permitted in this Agreement. Upon review and approval of the Contractor's invoice and verification that services have been rendered in conformity with this Agreement, the City, through payment issued by the Public Works and Engineering 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 the City's receipt of the invoice. If this Agreement is terminated for convenience for any reason, then the Contractor shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred, including lost profit, to the effective date of termination.
6. **BOND.** Contractor shall furnish City with a performance bond issued by a surety licensed to do business in the State of Florida prior to commencement of work in the amount of \$10,000.00.
7. **INSURANCE.** Contractor is required to submit to the 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 the City. During the term of the Agreement and any renewals, Contractor, at its sole cost and expense, shall maintain insurance coverage as follows:
 - A. **Workers Compensation:** Contractor will provide Worker's Compensation coverage for all employees at the site location. The limits will be statutory for Worker's Compensation and \$300,000.00 for Employers' Liability.
 - B. **Comprehensive General Liability:** Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
 - C. **Comprehensive Automobile Liability:** Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
 - D. **Umbrella Insurance:** The Contractor will provide an umbrella in excess to the coverage in paragraphs B), and C) of not less than \$1,000,000.00.

8. **WORK ORDERS.** The City may issue subsequent modifications to the work order(s) for additional work that was not known or included in the Specifications that is found to be needed during the course of this Agreement and above the amount set forth in Exhibit "C." Contractor must seek approval from the City before performing any additional work. The City must provide the Contractor with written documentation of the modification to any work order within three (3) business days of verbal approval. Contractor is not obligated to perform additional work until written modification has been received from the City but may commence work based upon a reasonable assumption that written modification will be issued. Incidental additional work performed by the Contractor without City consent will be evaluated and considered for payment based upon the work's merit. If the City determines the incidental additional work was not included in the original scope of the project and required for the Contractor's uninterrupted performance in fulfillment of the contract, then the City will approve the Contractor's request for payment for incidental additional work.

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

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

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

thereof from any money, then due or thereafter to become due to the Contractor; and if such cost shall exceed the balance due to Contractor, then the Contractor shall pay the difference to the City.

11. **BREACH.** Failure of Contractor or the City to perform the covenants, conditions, or provisions of the Agreement shall constitute a material default and breach of the Agreement. In the event of any default, the City has the right to terminate this Agreement immediately without notice to Contractor. In the event of any default of the City, except the payments required under the Agreement, Contractor may terminate this Agreement immediately without notice. If the City fails to timely pay the monies required under this Agreement, it has fifteen (15) days after written notice from Contractor to cure said default, unless the City disputes satisfactory performance of services.
12. **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. The 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. The 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. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this Agreement by the City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that City is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section.
13. **INDEMNIFICATION/HOLD HARMLESS.** To the extent permitted by law, Contractor hereby releases and waives all claims against the City, its officers, employees, agents, independent Contractors for any injury or damaged to the person, property, or business of Contractor, its agents, employees, sub-contractors, or other persons, for which injury or damages result from any act, neglect, occurrence, or condition in or about any City properties whether such damage is caused by the City or any other person. Nothing in the agreement shall

be construed as a waiver of the 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.

14. **PUBLIC RECORDS.** Contractor specifically acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the Contractor shall keep and maintain public records required by the City and to comply with §119.071, F.S., shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services required under this Agreement;
- b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer, at no cost to the City, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology system of the City.

If the 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.

15. **NON-ASSIGNMENT.** Contractor shall not assign, sell or transfer this Agreement or any portion hereof without receiving the written consent of the City. This Agreement is hereby deemed to be of a personal service contact nature, thus, subcontracting any portion of this Agreement is prohibited.

16. **APPLICABLE LAWS.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.
17. **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 this Agreement.
18. **WAIVER.** No failure of the City to insist upon strict performance in any one or more terms of this Agreement, nor any failure of the City to exercise any right or remedy under this Agreement shall constitute a waiver of any such term, right or remedy the City may have, or future rights to enforce compliance.
19. **NOTICES.** Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or when delivered personally at the parties address below:

Notice to CITY:

Natrevia Gradney-Mitchell, Public Works and Engineering Director
101 N. Church Street
Kissimmee, Florida 34741

Notice to Contractor:

Robert Capoferri – President
9021 Wire Road
Zephyrhills, Florida 33540

20. **ENTIRETY OF AGREEMENT.** This Agreement 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.
21. **MODIFICATIONS.** Any modifications or additional obligations assumed by either Party shall be binding only if written and valued considerations exchanged.

(Signature page to follow)

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

CONTRACTOR Asphalt Paving Systems, Inc.

By: _____

Title: Robert Capoferri, President

Date: 6/10/2022

STATE OF FLORIDA

COUNTY OF Pasco

The foregoing instrument was acknowledged before me this 10th day of June, 2022, by means of ☒ physical presence or ☐ online notarization, by Robert Capoferri as President for Asphalt Paving Systems, Inc. a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



AMANDA R. REICHART
Commission # HH 214726
Expires January 22, 2026

Notary: _____

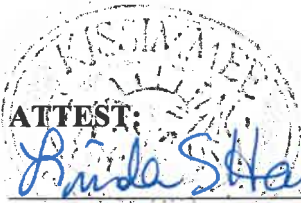
Print Name: Amanda Reichart

My Commission Expires: January 22, 2026

CITY OF KISSIMMEE

By: Olga Gonzalez
Olga Gonzalez, Mayor-Commissioner

Date: 6/21/2022



ATTEST:
Linda Hansell
Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

Olga Sanchez de Fuentes
City Attorney

EXHIBIT “A”

EXHIBIT “B”

**** THIS SCHEDULE OF OFFERS SHOULD BE THE FIRST PAGE SUBMITTED WITH YOUR BID ****
Bid IFB2022-002

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

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>COST</u>
1	TOTAL BID AMOUNT OF ITEMS 5 to 229	<u>\$122,409.03</u>
2	TOTAL BID AMOUNT OF ITEMS S-1 to S-9	<u>\$946.45</u>
3	TOTAL BID AMOUNT OF ITEMS S-10 to S-15	<u>\$28.40</u>
4	TOTAL BID AMOUNT OF ITEMS S-16 to S-26	<u>\$296.75</u>
5	TOTAL BID AMOUNT OF ITEMS S-27 to S-29	<u>\$2.75</u>
6	TOTAL BID AMOUNT OF ITEMS S-30 to S-32	<u>\$27.25</u>
7	TOTAL BID AMOUNT OF ITEMS S-33 to S-35	<u>\$64.75</u>
8	TOTAL BID AMOUNT OF ITEMS S-36 to S-38	<u>\$98.00</u>
9	TOTAL BID AMOUNT OF ITEMS S-39 to S-41	<u>—</u>
10	TOTAL BID AMOUNT OF ITEMS S-42 to S-47	<u>—</u>
11	TOTAL BID AMOUNT OF ITEMS S-48 to S-50	<u>\$15.75</u>

ACKNOWLEDGMENT OF ADDENDA NO.(S) 4 (IF APPLICABLE)

(Signature)

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

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

_____ We take exception to Specifications as follows:
 (initial)

(attach additional sheets, if necessary)

COMPANY NAME Asphalt Paving Systems, Inc.
 COMPANY ADDRESS 9021 Wire Road Zephyrhills, FL 33540

NOTE: OFFERS NOT RECEIVED IN DUPLICATE MAY BE REJECTED.

VENDORS ARE RESPONSIBLE FOR DELIVERY OF THEIR BID TO THE ADDRESS INDICATED ON THE BID COVER SHEET PRIOR TO THE DATE AND TIME SHOWN. BIDS NOT SO DELIVERED MAY BE REJECTED.

BY: _____
 (signature)
Robert Capoferri, President
 (typed name/title of signer)

DATE: 5/4/2022

EMAIL: FLEstimating@asphaltpavingsystems.com

TELEPHONE NO.: (813) 788-0010

FAX NO.: (813) 788-0020

CITY OF KISSIMMEE
ALTERNATIVE PAVING METHODS
SCHEDULE OF UNIT PRICES

Mobilization/Maintenance of Traffic				
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
Asphalt, Earthwork, and Concrete				
5	Inlet Protection System	1-25	EA	\$ 153.07
6	Inlet Protection System	26-50	EA	\$ 153.07
7	Inlet Protection System	51-100+	EA	\$ 153.07
8	Floating Turbidity Barrier	1-200	LF	\$ 45.93
9	Floating Turbidity Barrier	201-500	LF	\$ 30.64
10	Floating Turbidity Barrier	501-1000+	LF	\$ 30.64
11	Staked Silt Fence	1-200	LF	\$ 7.70
12	Staked Silt Fence	201-500	LF	\$ 6.16
13	Staked Silt Fence	501+	LF	\$ 6.16
14	Clearing and Grubbing	1	AC	\$ 82,910.30
15	Curb and Gutter Removal	1-200	LF	\$ 36.03
16	Curb and Gutter Removal	201-500	LF	\$ 34.05
17	Curb and Gutter Removal	501+	LF	\$ 34.05
18	Miscellaneous Concrete Removal	1-200	SY	\$ 72.00
19	Existing Pipe Removal	1-200	LF	\$ 123.09
20	Existing Pipe Removal	201-500	LF	\$ 107.86
21	Existing Pipe Removal	501+	LF	\$ 107.86
22	Removal of Existing Pavement	1-200	SY	\$ 72.00
23	Removal of Existing Pavement	201-500	SY	\$ 66.22
24	Removal of Existing Pavement	501+	SY	\$ 66.22
25	Roadway Excavation	1-200	CY	\$ 69.30
26	Roadway Excavation	201-500	CY	\$ 56.76
27	Roadway Excavation	501+	CY	\$ 56.76
28	Swale Grading	1-200	LF	\$ 82.12
29	Swale Grading	201-500	LF	\$ 75.68
30	Swale Grading	501+	LF	\$ 75.68
31	Embankment (Truckload)	1-200	CY	\$ 97.79
32	Embankment (Truckload)	201-500	CY	\$ 94.60
33	Embankment (Truckload)	501+	CY	\$ 94.60
34	Flowable Fill	1-9	CY	\$ 974.60
35	Flowable Fill	10-18	CY	\$ 945.62
36	Flowable Fill	19-27+	CY	\$ 945.62
37	Asphaltic Base Course	1-200	TN	\$ 284.96
38	Asphaltic Base Course	201-500	TN	\$ 274.23
39	Asphaltic Base Course	501+	TN	\$ 274.23

40	Optional Base Group 1	1-200	SY	\$ 55.66
41	Optional Base Group 1	201-500	SY	\$ 55.66
42	Optional Base Group 1	501-1000+	SY	\$ 36.41
43	Optional Base Group 4	1-200	SY	\$ 61.22
44	Optional Base Group 4	201-500	SY	\$ 61.22
45	Optional Base Group 4	501-1000+	SY	\$ 41.97
46	Optional Base Group 6	1-200	SY	\$ 89.71
47	Optional Base Group 6	201-500	SY	\$ 89.71
48	Optional Base Group 6	501-1000+	SY	\$ 59.02
49	Optional Base Group 9	1-200	SY	\$ 95.32
50	Optional Base Group 9	201-500	SY	\$ 95.32
51	Optional Base Group 9	501-1000+	SY	\$ 64.57
52	Optional Base Group 11	1-200	SY	\$ 100.87
53	Optional Base Group 11	201-500	SY	\$ 100.87
54	Optional Base Group 11	501-1000+	SY	\$ 70.18
55	Milling (1")	1-200	SY	\$ 132.57
56	Milling (1")	201-500	SY	\$ 53.03
57	Milling (1")	501-1000+	SY	\$ 5.94
58	Milling (1.5")	1-200	SY	\$ 132.57
59	Milling (1.5")	201-500	SY	\$ 53.03
60	Milling (1.5")	501-1000+	SY	\$ 5.94
61	Milling (2")	1-200	SY	\$ 132.57
62	Milling (2")	201-500	SY	\$ 53.03
63	Milling (2")	501-1000+	SY	\$ 5.94
64	Milling (3")	1-200	SY	\$ 132.57
65	Milling (3")	201-500	SY	\$ 53.03
66	Milling (3")	501-1000+	SY	\$ 6.88
67	Milling (4")	1-200	SY	\$ 132.57
68	Milling (4")	201-500	SY	\$ 53.03
69	Milling (4")	501-1000+	SY	\$ 6.88
70	Milling (5")	1-200	SY	\$ 132.57
71	Milling (5")	201-500	SY	\$ 53.03
72	Milling (5")	501-1000+	SY	\$ 7.21
73	Milling (6")	1-200	SY	\$ 132.57
74	Milling (6")	201-500	SY	\$ 53.03
75	Milling (6")	501-1000+	SY	\$ 7.54
76	Type III Asphaltic Concrete	1-200	TN	\$ 230.00
77	Type III Asphaltic Concrete	201-500	TN	\$ 205.00
78	Type III Asphaltic Concrete	501+	TN	\$ 180.00
79	Asphaltic Concrete Type "S-1"	1-200	TN	\$ 270.00
80	Asphaltic Concrete Type "S-1"	201-500	TN	\$ 210.00
81	Asphaltic Concrete Type "S-1"	501+	TN	\$ 155.00
82	Asphaltic Concrete Type "S-3"	1-200	TN	\$ 272.00
83	Asphaltic Concrete Type "S-3"	201-500	TN	\$ 215.00
84	Asphaltic Concrete Type "S-3"	501+	TN	\$ 158.00
85	Adjusting Manholes (Metal Riser Rings)	1-5	EA	\$ 2,424.73
86	Adjusting Manholes (Metal Riser Rings)	6-10	EA	\$ 2,269.41

87	Adjusting Manholes (Metal Riser Rings)	11-20+	EA	\$ 2,269.41
88	Adjusting Valve Boxes (Metal Riser Rings)	1-5	EA	\$ 1,616.51
89	Adjusting Valve Boxes (Metal Riser Rings)	6-10	EA	\$ 1,512.94
90	Adjusting Valve Boxes (Metal Riser Rings)	11-20+	EA	\$ 1,512.94
91	18" RCP CD - CI	1-200	LF	\$ 280.56
92	18" RCP CD - CI	201-500	LF	\$ 253.06
93	18" RCP CD - CI	501+	LF	\$ 253.06
94	Type "A" Curb	1-25	LF	\$ 109.25
95	Type "A" Curb	26-50	LF	\$ 70.73
96	Type "A" Curb	51-100+	LF	\$ 70.73
97	Type "B" Curb	1-20	LF	\$ 136.62
98	Type "B" Curb	26-50	LF	\$ 70.73
99	Type "B" Curb	51-100+	LF	\$ 70.73
100	Type "D" Curb	1-25	LF	\$ 109.29
101	Type "D" Curb	26-50	LF	\$ 70.73
102	Type "D" Curb	51-100+	LF	\$ 70.73
103	Type "E" Curb	1-25	LF	\$ 109.29
104	Type "E" Curb	26-50	LF	\$ 70.73
105	Type "E" Curb	51-100+	LF	\$ 70.73
106	Type "F" Curb	1-25	LF	\$ 109.29
107	Type "F" Curb	26-50	LF	\$ 70.73
108	Type "F" Curb	51-100+	LF	\$ 70.73
109	Valley Gutter	1-25	LF	\$ 136.62
110	Valley Gutter	26-50	LF	\$ 88.44
111	Valley Gutter	51-100+	LF	\$ 88.44
112	Traffic Separator - (4')	1-25	LF	\$ 136.62
113	Traffic Separator - (4')	26-50	LF	\$ 88.44
114	Traffic Separator - (4')	51-100+	LF	\$ 88.44
115	Traffic Separator - (6')	1-25	LF	\$ 163.90
116	Traffic Separator - (6')	26-50	LF	\$ 106.10
117	Traffic Separator - (6')	51-100+	LF	\$ 91.74
118	Traffic Separator - (width varies)	1-25	SY	\$ 160.88
119	Traffic Separator - (width varies)	26-50	SY	\$ 141.46
120	Traffic Separator - (width varies)	51-100+	SY	\$ 122.27
121	Concrete Sidewalk - (4" thickness)	1-100	SY	\$ 97.79
122	Concrete Sidewalk - (4" thickness)	101-250	SY	\$ 97.79
123	Concrete Sidewalk - (4" thickness)	251-500+	SY	\$ 77.28
124	Concrete Sidewalk - (6" thickness)	1-100	SY	\$ 129.86
125	Concrete Sidewalk - (6" thickness)	101-250	SY	\$ 101.48
126	Concrete Sidewalk - (6" thickness)	251-500+	SY	\$ 101.48
127	Concrete Sidewalk - (6" Thickness)	1-100	SY	\$ 129.86
128	Concrete Sidewalk - (6" Thickness)	101-250	SY	\$ 101.48
129	Concrete Sidewalk - (6" Thickness)	251+	SY	\$ 101.04
130	Detectable Warning Surfaces (Inset)	1-50	SF	\$ 35.26
131	Detectable Warning Surfaces (Inset)	51-100	SF	\$ 35.26
132	Detectable Warning Surfaces (Inset)	101+	SF	\$ 35.26
133	Detectable Warning Surfaces (Screwdown Retro-Fit)	1-50	SF	\$ 38.28

134	Detectable Warning Surfaces (Screwdown Retro-Fit)	51-100	SF	\$ 38.28
135	Detectable Warning Surfaces (Screwdown Retro-Fit)	101+	SF	\$ 38.28
136	Sodding (Bahia)	1-200	SY	\$ 9.90
137	Sodding (Bahia)	201-500	SY	\$ 8.80
138	Sodding (Bahia)	501+	SY	\$ 5.50
139	Sodding (Floritam)	1-200	SY	\$ 12.10
140	Sodding (Floritam)	201-500	SY	\$ 11.00
141	Sodding (Floritam)	501+	SY	\$ 7.70
142	Loop Assembly, F&I - Type B	1	AS	\$ 5,720.00

Pavement Markings

143	Install Sign (single post)	1-5	EA	\$ 759.00
144	Install Sign (single post)	6-15	EA	\$ 695.75
145	Install Sign (single post)	16-30+	EA	\$ 670.45
146	Install Sign (multi-post)	1-5	EA	\$ 1,518.00
147	Install Sign (multi-post)	6-15	EA	\$ 1,391.50
148	Install Sign (multi- post)	16-30+	EA	\$ 1,239.70
149	Reflective Pavement Markers (RPM's)	1-20	EA	\$ 10.35
150	Reflective Pavement Markings (RPM's)	21-60	EA	\$ 6.90
151	Reflective Pavement Markers (RPM's)	61-100+	EA	\$ 5.75
152	6" Solid Traffic Stripe (paint) (white)	1-200	LF	\$ 1.84
153	6" Solid Traffic Stripe (paint) (white)	201-500	LF	\$ 1.38
154	6" Solid Traffic Stripe (paint) (white)	501-1000+	LF	\$ 0.81
155	6" Solid Traffic Stripe (paint) (yellow)	1-200	LF	\$ 1.84
156	6" Solid Traffic Stripe (paint) (yellow)	201-500	LF	\$ 1.38
157	6" Solid Traffic Stripe (paint) (yellow)	501-1000+	LF	\$ 0.81
158	12" Solid Traffic Stripe (paint)	1-25	LF	\$ 5.75
159	12" Solid Traffic Stripe (paint)	26-50	LF	\$ 5.18
160	12" Solid Traffic Stripe (paint)	51-100+	LF	\$ 4.60
161	18" Solid Traffic Stripe (paint)	1-25	LF	\$ 5.98
162	18" Solid Traffic Stripe (paint)	26-50	LF	\$ 5.18
163	18" Solid Traffic Stripe (paint)	51-100+	LF	\$ 4.83
164	24" Solid Traffic Stripe (paint)	1-25	LF	\$ 11.50
165	24" Solid Traffic Stripe (paint)	26-50	LF	\$ 10.35
166	24" Solid Traffic Stripe (paint)	51-100+	LF	\$ 9.20
167	6" Skip Traffic Stripe (paint)	1-200	LF	\$ 2.88
168	6" Skip Traffic Stripe (paint)	201-500	LF	\$ 2.30
169	6" Skip Traffic Stripe (paint)	501-1000+	LF	\$ 1.73
170	6" Dotted Guide Lines (paint)	1-50	LF	\$ 2.88
171	6" Dotted Guide Lines (paint)	51-100	LF	\$ 2.30
172	6" Dotted Guide Lines (paint)	101-150+	LF	\$ 1.73
173	Directional Arrows (Paint)	1-10	EA	\$ 46.00
174	Directional Arrows (Paint)	11-50	EA	\$ 34.50
175	Directional Arrows (Paint)	51+	EA	\$ 28.75
176	Pavement Messages (Paint)	1-10	EA	\$ 69.00
177	Pavement Messages (Paint)	11-50	EA	\$ 57.50
178	Pavement Messages (Paint)	51+	EA	\$ 40.25
179	8" Solid Traffic Stripe (Paint)	1-200	LF	\$ 3.45

180	8" Solid Traffic Stripe (Paint)	201-500	LF	\$	2.30
181	8" Solid Traffic Stripe (Paint)	501-1000+	LF	\$	1.73
182	6" Solid Stripe/Extru. Thermo (white)	1-200	LF	\$	3.34
183	6" Solid Stripe/Extru. Thermo (white)	201-500	LF	\$	2.88
184	6" Solid Stripe/Extru. Thermo (white)	501-1000+	LF	\$	2.30
185	6" Solid Stripe/Extru. Thermo (yellow)	1-200	LF	\$	3.34
186	6" Solid Stripe/Extru. Thermo (yellow)	201-500	LF	\$	2.88
187	6" Solid Stripe/Extru. Thermo (yellow)	501-1000+	LF	\$	2.30
188	12" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$	8.05
189	12" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$	6.90
190	12" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$	5.75
191	18" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$	8.63
192	18" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$	7.48
193	18" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$	6.33
194	24" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$	16.10
195	24" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$	13.80
196	24" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$	11.50
197	6" Skip Traffic Stripe/Extru. Thermo	1-200	LF	\$	2.88
198	6" Skip Traffic Stripe/Extru. Thermo	201-500	LF	\$	2.59
199	6" Skip Traffic Stripe/Extru. Thermo	501-1000+	LF	\$	2.30
200	6" Dotted Guide Lines/Extru. Thermo	1-50	LF	\$	2.88
201	6" Dotted Guide Lines/Extru. Thermo.	51-100	LF	\$	2.59
202	6" Dotted Guide Lines/Extru. Thermo.	101-150+	LF	\$	2.30
203	Directional Arrows / Extru. Thermo.	1	EA	\$	86.25
204	Preformed Symbol	1	EA	\$	345.00
205	Pavement Messages / Extru. Thermo.	1	EA	\$	207.00
206	8" Solid Traffic Stripe / Extru. Thermo	1-200	LF	\$	4.03
207	8" Solid Traffic Stripe / Extru. Thermo	201-500	LF	\$	2.88
208	8" Solid Traffic Stripe / Extru. Thermo	501-1000+	LF	\$	2.30
209	Remove Ex. Pavement Markings(paint)	1-100	SF	\$	3.45
210	Remove Ex. Pavement Markings(paint)	101-300	SF	\$	2.88
211	Remove Ex. Pavement Markings(paint)	301-500+	SF	\$	2.59
212	Rem. Ex. Pavement Markings(thermo)	1-100	SF	\$	4.60
213	Rem. Ex. Pavement Markings(thermo)	101-300	SF	\$	4.31
214	Rem. Ex. Pavement Markings(thermo)	301-500+	SF	\$	4.03
TOTAL BID AMOUNT OF ITEMS 5 to 214 ABOVE					\$122,409.03
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price	
HOT-IN-PLACE (With Virgin Top Course) Asphalt Recycling					
215	Asphalt Recycling	1 - 10,000	SY	NB	
216	Asphalt Recycling	10,001 - 50,000	SY	NB	
217	Asphalt Recycling	50,001+	SY	NB	
218	Recycling Agent	1 - 10,000	GAL	NB	
219	Recycling Agent	10,001 - 50,000	GAL	NB	
220	Recycling Agent	50,001+	GAL	NB	
HOT-IN-PLACE (100%) Asphalt Recycling					
221	Base Course HIPR	1 - 10,000	SY	NB	

222	Base Course HIPR	10,001 - 50,000	SY	NB
223	Base Course HIPR	50,001+	SY	NB
224	2" Complete HIPR	1 - 10,000	SY	NB
225	2" Complete HIPR	10,001 - 50,000	SY	NB
226	2" Complete HIPR	50,001+	SY	NB
227	Asphalt Recycling Agent	1 - 10,000	SY	NB
228	Asphalt Recycling Agent	10,001 - 50,000	SY	NB
229	Asphalt Recycling Agent	50,001+	SY	NB

TOTAL BID AMOUNT OF ITEMS 215 to 229 ABOVE \$ -

Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
Specialty Paving Methods				
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-1	Rut Fill / Scratch Course (Micro)	1-50	TN	\$ 355.00
S-2	Rut Fill / Scratch Course (Micro)	51-100	TN	\$ 305.00
S-3	Rut Fill / Scratch Course (Micro)	101+	TN	\$ 260.00
S-4	Single Micro Surface 20-24 lbs	1-10,000	SY	\$ 4.40
S-5	Single Micro Surface 20-24 lbs	10,001 - 50,000	SY	\$ 3.65
S-6	Single Micro Surface 20-24 lbs	50,001+	SY	\$ 3.05
S-7	Double Micro Surface 30-34 lbs	1-10,000	SY	\$ 5.75
S-8	Double Micro Surface 30-34 lbs	10,001 - 50,000	SY	\$ 4.95
S-9	Double Micro Surface 30-34 lbs	50,001+	SY	\$ 4.65

TOTAL BID AMOUNT OF ITEMS S-1 to S-9 ABOVE \$ 946.45

Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-10	Single Chip Seal -#89 Granite	1-10,000	SY	\$ 5.55
S-11	Single Chip Seal -#89 Granite	10,001 - 50,000	SY	\$ 3.30
S-12	Single Chip Seal -#89 Granite	50,001+	SY	\$ 3.05
S-13	Double Chip Seal -#57 w #89 Granite	1-10,000	SY	\$ 6.75
S-14	Double Chip Seal -#57 w #89 Granite	10,001 - 50,000	SY	\$ 5.10
S-15	Double Chip Seal -#57 w #89 Granite	50,001+	SY	\$ 4.65

TOTAL BID AMOUNT OF ITEMS S-10 to S-15 ABOVE \$ 28.40

Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-16	Full Depth Reclamation /6"-9"	1-10,000	SY	\$ 13.25
S-17	Full Depth Reclamation /6"-9"	10,001 - 50,000	SY	\$ 7.65
S-18	Full Depth Reclamation /6"-9"	50,001+	SY	\$ 7.10

S-19	Full Depth Reclamation 9"-12"	1-10,000	SY	\$ 13.75
S-20	Full Depth Reclamation 9"-12"	10,001 - 50,000	SY	\$ 8.25
S-21	Full Depth Reclamation 9"-12"	50,001+	SY	\$ 7.90
S-22	Cement for Reclamation	1	TN	\$ 190.00
S-23	Emulsion for Reclamation	1	Gal	\$ 2.85
S-24	Reclaimed Asphalt Paving (RAP)	1-10,000	SY	\$ 18.00
S-25	Reclaimed Asphalt Paving (RAP)	10,001 - 50,000	SY	\$ 15.00
S-26	Reclaimed Asphalt Paving (RAP)	50,001+	SY	\$ 13.00
TOTAL BID AMOUNT OF ITEMS S-16 to S-26 ABOVE				\$ 296.75
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-27	Fog Seal	1- 10,000	SY	\$ 1.10
S-28	Fog Seal	10,001- 50,000	SY	\$ 0.85
S-29	Fog Seal	50,000+	SY	\$ 0.80
TOTAL BID AMOUNT OF ITEMS S-27 to S-29 ABOVE				\$ 2.75
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-30	Cape Seal	1- 10,000	SY	\$ 11.30
S-31	Cape Seal	10,001- 50,000	SY	\$ 8.25
S-32	Cape Seal	50,000+	SY	\$ 7.70
TOTAL BID AMOUNT OF ITEMS S-30 to S-32 ABOVE				\$ 27.25
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-33	In-Place Recycling-Reconstrction	1- 10,000	SY	\$ 24.55
S-34	In-Place Recycling-Reconstrction	10,001- 50,000	SY	\$ 20.70
S-35	In-Place Recycling-Reconstrction	50,000+	SY	\$ 19.50
TOTAL BID AMOUNT OF ITEMS S-33 to S-35 ABOVE				\$ 64.75
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-36	Crack Filling/Sealing	1-500	GAL	\$ 35.00
S-37	Crack Filling/Sealing	501 - 1000	GAL	\$ 33.00
S-38	Crack Filling/Sealing	1,001+	GAL	\$ 30.00

TOTAL BID AMOUNT OF ITEMS S-36 to S-38 ABOVE				\$ 98.00
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	NB
2	Night Work Mobilization	1	%	NB
3	Maintenance of Traffic	1	%	NB
4	Maintenance of Traffic Nightwork	1	%	NB
S-39	Asphalt Rejuvenator	1-50,000	SY	NB
S-40	Asphalt Rejuvenator	50,001 - 100,000	SY	NB
S-41	Asphalt Rejuvenator	100,001+	SY	NB
TOTAL BID AMOUNT OF ITEMS S-39 to S-41 ABOVE				\$ -
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	NB
2	Night Work Mobilization	1	%	NB
3	Maintenance of Traffic	1	%	NB
4	Maintenance of Traffic Nightwork	1	%	NB
S-42	Speed Hump W/ Curbing	1-50	FT	NB
S-43	Speed Hump W/ Curbing	51-100	FT	NB
S-44	Speed Hump W/ Curbing	101+	FT	NB
S-45	Speed Hump No Curbing	1-50	FT	NB
S-46	Speed Hump No Curbing	51-100	FT	NB
S-47	Speed Hump No Curbing	101+	FT	NB
TOTAL BID AMOUNT OF ITEMS S-42 to S-47 ABOVE				\$ -
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-48	Slurry Seal	1-10,000	SY	\$ 6.00
S-49	Slurry Seal	10,001 - 50,000	SY	\$ 5.10
S-50	Slurry Seal	50,001+	SY	\$ 4.65
TOTAL BID AMOUNT OF ITEMS S-48 to S-50 ABOVE				\$ 15.75

**Quantities are not guaranteed. Final payment will be based on actual quantities.

NAME OF CONTRACTOR: Asphalt Paving Systems, Inc.

CITY OF
KISSIMMEE
1 8 8 3

March 21, 2022

Addendum No. 1

Project: Alternative Paving Methods
Bid No: IFB2022-002

TO ALL PROPOSERS:

The following items are clarifications, corrections, additions, deletions and / or revisions, which shall take precedence over the original documents.

Vendor Link

Due to COVID-19 interested parties are requested to respond to this Request for Proposal by Electronic submittals. Email or other means will not be accepted. Vendor Link help can be accessed by emailing, support@evendorlink.com, and Demandstar help can be accessed by emailing, support@demandstar.com.

To ensure correct information formatting:

- Submit electronically through myvendorlink.com
- Upload files only in MS Word (.doc or .docx), Excel (.xls or .xlsx), and PowerPoint (.ppt or .pptx); Adobe Portable Document Format (.pdf); Compressed File (.ZIP) formats.
- Enable printing on files submitted
- Clearly identify the Bid Number, Name, Submission Date, and Name on the Response Cover Page or Letterhead
- Contact Vendor Link technical support at support@evendorlink.com if technical difficulties arise during proposal submission. Any bids received after above stated time and date will not be considered.

If you are receiving this message you have requested updates and/or information for a particular project or service which can be obtained by registering with <https://www.myvendorlink.com/common/register.aspx>. Registering with myvendorlink will ensure that you receive notifications, and of any changes to an advertised solicitation.

DemandStar:

To ensure correct information formatting:

- Submit electronically through demandstar.com
- Upload files only in MS Word (.doc or .docx), Excel (.xls or .xlsx), and PowerPoint (.ppt or .pptx); Adobe Portable Document Format (.pdf); Compressed File (.ZIP) formats.
- Enable printing on files submitted
- Clearly identify the Bid Number, Name, Submission Date, and Name on the Response Cover Page or Letterhead
- Contact Demandstar technical support at support@demandstar.com if technical difficulties arise during proposal submission. Any bids received after above stated time and date will not be considered.

If you are receiving this message, you have requested updates and/or information for a particular project or service which can be obtained by registering with

<https://www.demandstar.com/registration>. Registering with Demandstar will ensure that you receive notifications, and of any changes to an advertised solicitation.

It shall be the sole responsibility of the bidder to have their bid electronically delivered to Procurement Services Division for receipt on or before the above stated time and date.

Non-Mandatory Pre-bid Meeting Update

The scheduled Non-Mandatory Pre-bid Meeting located at the Kissimmee City Hall on April 13, 2022 at 10:00AM has been moved to a teleconference platform.

You are invited to a Zoom meeting.

Topic: IFB2022-002 Alternative Paving Methods Non-Mandatory Pre-bid Meeting

Time: Apr 13, 2022 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/87363894003?pwd=bERuZDMwV1pNXXNdTRrN2lZZmZGdz09>

Meeting ID: 873 6389 4003

Passcode: jKGz8E

One tap mobile

+13017158592,,87363894003# US (Washington DC)

+13126266799,,87363894003# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

Meeting ID: 873 6389 4003

Find your local number: <https://us02web.zoom.us/j/87363894003>

A. ACKNOWLEDGMENT OF ADDENDA:

1. The proposer shall acknowledge receipt of this addendum by completing the applicable section in the IFB. The Proposer shall submit said Form with the proposal.
2. All other terms and conditions of the IFB remain unchanged.

Brandon Durango
Procurement Manager

ACKNOWLEDGMENT OF ADDENDA NO.(S) 4 (IF APPLICABLE)

(Signature)

COMPANY NAME

Asphalt Paving Systems, Inc

COMPANY ADDRESS

9021 Wire Road Zephyrhills, FL 33540

BY:

DATE: 5/4/2022

(signature)

Robert Capoferri, President

EMAIL: FLEstimating@asphaltpavingsystems.com

(typed name/title of signer)



March 25, 2022

Addendum No. 2

Project: Alternative Paving Methods
Bid No: IFB2022-002

TO ALL PROPOSERS:

The following items are clarifications, corrections, additions, deletions and / or revisions, which shall take precedence over the original documents.

1. Does the City have an annual estimate/budget for this Contract?

Answer:

- Road Resurfacing \$500K - \$1 Million annually
- ADA Improvements Projects \$500K annually
- The City may have additional Capital Roadway Projects that will be funded separately by the City or Grant funding.

2. How many Contractors is the City anticipating on awarding this to?

Answer: Two or Three Contractors.

3. Has this Term Contract been awarded in the past? If so, can you provide the ITB# and name of the Contract and the awardees?

Answer: No.

4. Does the City have the Bid Form of pay items available in excel format?

Answer: See Attachment C "workbook" along with this Addendum.

A. ACKNOWLEDGMENT OF ADDENDA:

1. The proposer shall acknowledge receipt of this addendum by completing the applicable section in the RFQ. The Proposer shall submit said Form with the proposal.
2. All other terms and conditions of the RFQ remain unchanged.

Brandon Durango
Procurement Manager

ACKNOWLEDGMENT OF ADDENDA NO.(S) 4 (IF APPLICABLE)

(Signature)

COMPANY NAME

Asphalt Paving Systems, Inc

COMPANY ADDRESS

9021 Wire Road Zephyrhills, FL 33540

BY:

DATE: 5/4/2022

(signature)

Robert Capoferri, President

EMAIL: FLEstimating@asphaltpavingsystems.com

(typed name/title of signer)



March 30, 2022

Addendum No. 3

Project: Alternative Paving Methods
Bid No: IFB2022-002

TO ALL PROPOSERS:

The following items are clarifications, corrections, additions, deletions and / or revisions, which shall take precedence over the original documents.

1. Would the City consider adding an asphalt price index adjustment similar to that used by FDOT due to the current volatility in the market?

Answer: Yes. The City will use the FDOT's Fuel and Asphalt / Bituminous Average Price Index

2. Is this solicitation/contract able to be piggybacked by another city/county?

Answer: Yes

3. Does the Contractor need to bid on all Contract Items, or can we provide select pricing for items that fall in our company's ability?

Answer: No. The Contractor does not need to bid on all Contract Items. The contractor may also elect to use subcontractors for items that fall outside their company's ability.

A. ACKNOWLEDGMENT OF ADDENDA:

1. The proposer shall acknowledge receipt of this addendum by completing the applicable section in the IFB. The Proposer shall submit said Form with the proposal.
2. All other terms and conditions of the IFB remain unchanged.

Brandon Durango
Procurement Manager

ACKNOWLEDGMENT OF ADDENDA NO.(S) 4 (IF APPLICABLE)

(Signature) 

COMPANY NAME Asphalt Paving Systems, Inc

COMPANY ADDRESS 9021 Wire Road Zephyrhills, FL 33540

BY: (signature) DATE: 5/4/2022

Robert Capoferri, President

(typed name/title of signer)

EMAIL: FLEstimating@asphaltpavingsystems.com



April 25, 2022

Addendum No. 4

**Project: Alternative Paving Methods
Bid No: IFB2022-002**

TO ALL PROPOSERS:

The following items are clarifications, corrections, additions, deletions and / or revisions, which shall take precedence over the original documents.

1. Is there a Payment bond required on this IFB?

Answer: Payment bond will be required when applicable and contractor will be given ample time to obtain payment bond.

2. What will be the average work order amount?

Answer: The average work order amount will depend on the size and location of the project.

3. How is the \$10,000 Performance bond being calculated? Is it driven from the average work order?

Answer: Revision 2.10 BOND REQUIREMENT: This bid requires the following bond:

The selected Bidder may be required to furnish Payment and Performance Bonds to the City of Kissimmee per Florida Statutes, Section 255.05 equal to 100 percent of the total amount of each project/task. Bond forms will be furnished by the City and only those forms will be used. Per Florida Statute 255.05, upon approval and award of the project, the performance and payment bonds are required to be recorded by the awarded contractor in the public records of Osceola County, Florida. An original or certified copy of the bonds must be returned to the City of Kissimmee Finance Department. A surety company, authorized to do business in the State of Florida and acceptable to the City of Kissimmee, shall sign the bonds. The bonds shall be dated with the actual execution date. With these bonds, the responsible party shall file certified copies of the power of attorney of such attorney-in fact signing the bond on behalf of the surety, and such certificates shall be certified to show that such power of attorney was in effect to and including the date of the actual execution of the bonds. If bonds are required, they shall remain in full force and effect until satisfactory completion of any specified performance guarantee tests, or satisfactory completion of all other contractual requirements, which shall occur last. The City of Kissimmee shall furnish a copy of the selected Bidder's bond to any lienor demanding that bond under the provisions of Florida Statutes.

4. Based on the bid package and its requirements, it is required that all contractors must be FDOT prequalified in respective pay items which they submit a bid. **Question: Is**

Flexible paving qualification is required for a contractor who is FDOT pre-qualified and certified on categories such as Drainage Driveway, Sidewalk, grading, grassing and etc, and who is not certified in flexible paving, but will face minor flexible paving incidental to his/her respective work such as the concrete/ drainage service as respective pay items such as ADA work or removal and replacement of curb? (Such as hot in place, pothole repair/ infrared asphalt recycling, heating in place repair and asphalt repair in front of curb or ADA concrete, Speed hump and drainage work). Considering that FDOT flexible paving qualifications are for long stretch of roadways and doesn't apply for the above-mentioned examples and small repair areas. **Do the contractors need to be FDOT flexible paving prequalified to perform small repair areas and incidental work to their respective work? Please clarify.**

Answer: No.

5. Is subcontracting allowed or not?

Answer: Subcontractor pricing will not be allowed during the bidding process. Once the contract is awarded the prime contractor will be allowed to use subcontractor for minor tasks on the work order.

6. Will the award be per Section or based on pricing the contractor will be awarded? Or will they be awarded what they are specialized in?

Answer: Sections are based off the prime's specialty.

7. Based on average work order from previous years, what are the amount for paving has the city done?

Answer: The City has not had a contract like this in the past. This will depend on the size and location of the project.

8. There are conflicting requirements in the bid for contractor qualifications. Will 5 projects in the last 2 years be acceptable for contractor qualifications?

Answer: Yes.

9. Since the term of the contract is through 2025, how will price adjustments be handled?

Answer: Price adjustments will be re-evaluated yearly.

10. Per General Requirement 4 Task Authorization Process, The contractor is to provide a price based on a City provided Scope of work for the individual project. Is the contractor bound to use the unit prices stipulated in the bid or will the contractor be able to adjust their pricing based on the specific scope of work provided for the task?

Answer: No. The contractor must honor the unit price stipulated in the bid.

11. The bid requires that the contractor have 3 reclaimers "on hand at time of bid". There is no need for there to be 3 reclaimers onsite at any time. Can this requirement be changed to the contractor having 2 reclaimers?

Answer: Yes. This requirement can be changed to only have 2 reclaimers.

12. Is a bid bond required to be submitted with the bid? If not, does a letter of surety from our bonding company need to accompany the bid?

Answer: A bid bond is not required with submittal nor a letter of surety as this is a Task Authorization process and a performance bond is required prior to commencement of any work assigned.

13. Does the City have an annual estimate/budget for this Contractor?

Answer: See Addendum No. 2 Question 1.

14. How many Contractors is the City anticipating on awarding this to?

Answer: See Addendum No. 2 Question 2.

15. Has the Term Contract been awarded in the past? If so, can you provide the ITB# and the name of the Contract and the awardees?

Answer: No.

16. Does the City have the Bid Form of pay items available in excel format?

Answer: See Attachment C "workbook" along with Addendum No. 2.

17. Does the Contractor need to bid on all Contract Items, or can we provide select pricing for items that fall in out company's ability?

Answer: See Addendum No. 3 Question 3.

18. Is a Bid Bond or Performance Bond required with the bid submittal?

Answer: See answer in Question 12.

A. ACKNOWLEDGMENT OF ADDENDA:

1. The proposer shall acknowledge receipt of this addendum by completing the applicable section in the IFB. The Proposer shall submit said Form with the proposal.
2. All other terms and conditions of the IFB remain unchanged.

Brandon Durango
Procurement Manager

ACKNOWLEDGMENT OF ADDENDA NO.(S) 4 (IF APPLICABLE)

(Signature) 

COMPANY NAME

Asphalt Paving Systems, Inc

COMPANY ADDRESS

9021 Wire Road Zephyrhills, FL 33540

BY:

DATE: 5/4/2022

(signature)

Robert Capoferri, President

EMAIL: FLEstimating@asphaltpavingsystems.com

(typed name/title of signer)

Attachment A

Local Vendor Affidavit of Eligibility

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

State of Florida
County of Osceola

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

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

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

Signature of Affiant

Typed/Printed Name of Affiant

Address of Affiant

State of Florida
County of _____

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

(Signature of Notary Public-State of Florida)

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

CITY OF KISSIMMEE
ALTERNATIVE PAVING METHODS
SCHEDULE OF UNIT PRICES

Mobilization/Maintenance of Traffic				
Item	Description	Estimated Quantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
Asphalt, Earthwork, and Concrete				
5	Inlet Protection System	1-25	EA	\$ 153.07
6	Inlet Protection System	26-50	EA	\$ 153.07
7	Inlet Protection System	51-100+	EA	\$ 153.07
8	Floating Turbidity Barrier	1-200	LF	\$ 45.93
9	Floating Turbidity Barrier	201-500	LF	\$ 30.64
10	Floating Turbidity Barrier	501-1000+	LF	\$ 30.64
11	Staked Silt Fence	1-200	LF	\$ 7.70
12	Staked Silt Fence	201-500	LF	\$ 6.16
13	Staked Silt Fence	501+	LF	\$ 6.16
14	Clearing and Grubbing	1	AC	\$ 82,910.30
15	Curb and Gutter Removal	1-200	LF	\$ 36.03
16	Curb and Gutter Removal	201-500	LF	\$ 34.05
17	Curb and Gutter Removal	501+	LF	\$ 34.05
18	Miscellaneous Concrete Removal	1-200	SY	\$ 72.00
19	Existing Pipe Removal	1-200	LF	\$ 123.09
20	Existing Pipe Removal	201-500	LF	\$ 107.86
21	Existing Pipe Removal	501+	LF	\$ 107.86
22	Removal of Existing Pavement	1-200	SY	\$ 72.00
23	Removal of Existing Pavement	201-500	SY	\$ 66.22
24	Removal of Existing Pavement	501+	SY	\$ 66.22
25	Roadway Excavation	1-200	CY	\$ 69.30
26	Roadway Excavation	201-500	CY	\$ 56.76
27	Roadway Excavation	501+	CY	\$ 56.76
28	Swale Grading	1-200	LF	\$ 82.12
29	Swale Grading	201-500	LF	\$ 75.68
30	Swale Grading	501+	LF	\$ 75.68
31	Embankment (Truckload)	1-200	CY	\$ 97.79
32	Embankment (Truckload)	201-500	CY	\$ 94.60
33	Embankment (Truckload)	501+	CY	\$ 94.60
34	Flowable Fill	1-9	CY	\$ 974.60
35	Flowable Fill	10-18	CY	\$ 945.62
36	Flowable Fill	19-27+	CY	\$ 945.62
37	Asphaltic Base Course	1-200	TN	\$ 284.96
38	Asphaltic Base Course	201-500	TN	\$ 274.23
39	Asphaltic Base Course	501+	TN	\$ 274.23

40	Optional Base Group 1	1-200	SY	\$	55.66
41	Optional Base Group 1	201-500	SY	\$	55.66
42	Optional Base Group 1	501-1000+	SY	\$	36.41
43	Optional Base Group 4	1-200	SY	\$	61.22
44	Optional Base Group 4	201-500	SY	\$	61.22
45	Optional Base Group 4	501-1000+	SY	\$	41.97
46	Optional Base Group 6	1-200	SY	\$	89.71
47	Optional Base Group 6	201-500	SY	\$	89.71
48	Optional Base Group 6	501-1000+	SY	\$	59.02
49	Optional Base Group 9	1-200	SY	\$	95.32
50	Optional Base Group 9	201-500	SY	\$	95.32
51	Optional Base Group 9	501-1000+	SY	\$	64.57
52	Optional Base Group 11	1-200	SY	\$	100.87
53	Optional Base Group 11	201-500	SY	\$	100.87
54	Optional Base Group 11	501-1000+	SY	\$	70.18
55	Milling (1")	1-200	SY	\$	132.57
56	Milling (1")	201-500	SY	\$	53.03
57	Milling (1")	501-1000+	SY	\$	5.94
58	Milling (1.5")	1-200	SY	\$	132.57
59	Milling (1.5")	201-500	SY	\$	53.03
60	Milling (1.5")	501-1000+	SY	\$	5.94
61	Milling (2")	1-200	SY	\$	132.57
62	Milling (2")	201-500	SY	\$	53.03
63	Milling (2")	501-1000+	SY	\$	5.94
64	Milling (3")	1-200	SY	\$	132.57
65	Milling (3")	201-500	SY	\$	53.03
66	Milling (3")	501-1000+	SY	\$	6.88
67	Milling (4")	1-200	SY	\$	132.57
68	Milling (4")	201-500	SY	\$	53.03
69	Milling (4")	501-1000+	SY	\$	6.88
70	Milling (5")	1-200	SY	\$	132.57
71	Milling (5")	201-500	SY	\$	53.03
72	Milling (5")	501-1000+	SY	\$	7.21
73	Milling (6")	1-200	SY	\$	132.57
74	Milling (6")	201-500	SY	\$	53.03
75	Milling (6")	501-1000+	SY	\$	7.54
76	Type III Asphaltic Concrete	1-200	TN	\$	230.00
77	Type III Asphaltic Concrete	201-500	TN	\$	205.00
78	Type III Asphaltic Concrete	501+	TN	\$	180.00
79	Asphaltic Concrete Type "S-1"	1-200	TN	\$	270.00
80	Asphaltic Concrete Type "S-1"	201-500	TN	\$	210.00
81	Asphaltic Concrete Type "S-1"	501+	TN	\$	155.00
82	Asphaltic Concrete Type "S-3"	1-200	TN	\$	272.00
83	Asphaltic Concrete Type "S-3"	201-500	TN	\$	215.00
84	Asphaltic Concrete Type "S-3"	501+	TN	\$	158.00
85	Adjusting Manholes (Metal Riser Rings)	1-5	EA	\$	2,424.73
86	Adjusting Manholes (Metal Riser Rings)	6-10	EA	\$	2,269.41

87	Adjusting Manholes (Metal Riser Rings)	11-20+	EA	\$ 2,269.41
88	Adjusting Valve Boxes (Metal Riser Rings)	1-5	EA	\$ 1,616.51
89	Adjusting Valve Boxes (Metal Riser Rings)	6-10	EA	\$ 1,512.94
90	Adjusting Valve Boxes (Metal Riser Rings)	11-20+	EA	\$ 1,512.94
91	18" RCP CD - CI	1-200	LF	\$ 280.56
92	18" RCP CD - CI	201-500	LF	\$ 253.06
93	18" RCP CD - CI	501+	LF	\$ 253.06
94	Type "A" Curb	1-25	LF	\$ 109.25
95	Type "A" Curb	26-50	LF	\$ 70.73
96	Type "A" Curb	51-100+	LF	\$ 70.73
97	Type "B" Curb	1-20	LF	\$ 136.62
98	Type "B" Curb	26-50	LF	\$ 70.73
99	Type "B" Curb	51-100+	LF	\$ 70.73
100	Type "D" Curb	1-25	LF	\$ 109.29
101	Type "D" Curb	26-50	LF	\$ 70.73
102	Type "D" Curb	51-100+	LF	\$ 70.73
103	Type "E" Curb	1-25	LF	\$ 109.29
104	Type "E" Curb	26-50	LF	\$ 70.73
105	Type "E" Curb	51-100+	LF	\$ 70.73
106	Type "F" Curb	1-25	LF	\$ 109.29
107	Type "F" Curb	26-50	LF	\$ 70.73
108	Type "F" Curb	51-100+	LF	\$ 70.73
109	Valley Gutter	1-25	LF	\$ 136.62
110	Valley Gutter	26-50	LF	\$ 88.44
111	Valley Gutter	51-100+	LF	\$ 88.44
112	Traffic Separator - (4')	1-25	LF	\$ 136.62
113	Traffic Separator - (4')	26-50	LF	\$ 88.44
114	Traffic Separator - (4')	51-100+	LF	\$ 88.44
115	Traffic Separator - (6')	1-25	LF	\$ 163.90
116	Traffic Separator - (6')	26-50	LF	\$ 106.10
117	Traffic Separator - (6')	51-100+	LF	\$ 91.74
118	Traffic Separator - (width varies)	1-25	SY	\$ 160.88
119	Traffic Separator - (width varies)	26-50	SY	\$ 141.46
120	Traffic Separator - (width varies)	51-100+	SY	\$ 122.27
121	Concrete Sidewalk - (4" thickness)	1-100	SY	\$ 97.79
122	Concrete Sidewalk - (4" thickness)	101-250	SY	\$ 97.79
123	Concrete Sidewalk - (4" thickness)	251-500+	SY	\$ 77.28
124	Concrete Sidewalk - (6" thickness)	1-100	SY	\$ 129.86
125	Concrete Sidewalk - (6" thickness)	101-250	SY	\$ 101.48
126	Concrete Sidewalk - (6" thickness)	251-500+	SY	\$ 101.48
127	Concrete Sidewalk - (6" Thickness)	1-100	SY	\$ 129.86
128	Concrete Sidewalk - (6" Thickness)	101-250	SY	\$ 101.48
129	Concrete Sidewalk - (6" Thickness)	251+	SY	\$ 101.04
130	Detectable Warning Surfaces (Inset)	1-50	SF	\$ 35.26
131	Detectable Warning Surfaces (Inset)	51-100	SF	\$ 35.26
132	Detectable Warning Surfaces (Inset)	101+	SF	\$ 35.26
133	Detectable Warning Surfaces (Screwdown Retro-Fit)	1-50	SF	\$ 38.28

134	Detectable Warning Surfaces (Screwdown Retro-Fit)	51-100	SF	\$ 38.28
135	Detectable Warning Surfaces (Screwdown Retro-Fit)	101+	SF	\$ 38.28
136	Sodding (Bahia)	1-200	SY	\$ 9.90
137	Sodding (Bahia)	201-500	SY	\$ 8.80
138	Sodding (Bahia)	501+	SY	\$ 5.50
139	Sodding (Floritam)	1-200	SY	\$ 12.10
140	Sodding (Floritam)	201-500	SY	\$ 11.00
141	Sodding (Floritam)	501+	SY	\$ 7.70
142	Loop Assembly, F&I - Type B	1	AS	\$ 5,720.00

Pavement Markings

143	Install Sign (single post)	1-5	EA	\$ 759.00
144	Install Sign (single post)	6-15	EA	\$ 695.75
145	Install Sign (single post)	16-30+	EA	\$ 670.45
146	Install Sign (multi-post)	1-5	EA	\$ 1,518.00
147	Install Sign (multi-post)	6-15	EA	\$ 1,391.50
148	Install Sign (multi- post)	16-30+	EA	\$ 1,239.70
149	Reflective Pavement Markers (RPM's)	1-20	EA	\$ 10.35
150	Reflective Pavement Markings (RPM's)	21-60	EA	\$ 6.90
151	Reflective Pavement Markers (RPM's)	61-100+	EA	\$ 5.75
152	6" Solid Traffic Stripe (paint) (white)	1-200	LF	\$ 1.84
153	6" Solid Traffic Stripe (paint) (white)	201-500	LF	\$ 1.38
154	6" Solid Traffic Stripe (paint) (white)	501-1000+	LF	\$ 0.81
155	6" Solid Traffic Stripe (paint) (yellow)	1-200	LF	\$ 1.84
156	6" Solid Traffic Stripe (paint) (yellow)	201-500	LF	\$ 1.38
157	6" Solid Traffic Stripe (paint) (yellow)	501-1000+	LF	\$ 0.81
158	12" Solid Traffic Stripe (paint)	1-25	LF	\$ 5.75
159	12" Solid Traffic Stripe (paint)	26-50	LF	\$ 5.18
160	12" Solid Traffic Stripe (paint)	51-100+	LF	\$ 4.60
161	18" Solid Traffic Stripe (paint)	1-25	LF	\$ 5.98
162	18" Solid Traffic Stripe (paint)	26-50	LF	\$ 5.18
163	18" Solid Traffic Stripe (paint)	51-100+	LF	\$ 4.83
164	24" Solid Traffic Stripe (paint)	1-25	LF	\$ 11.50
165	24" Solid Traffic Stripe (paint)	26-50	LF	\$ 10.35
166	24" Solid Traffic Stripe (paint)	51-100+	LF	\$ 9.20
167	6" Skip Traffic Stripe (paint)	1-200	LF	\$ 2.88
168	6" Skip Traffic Stripe (paint)	201-500	LF	\$ 2.30
169	6" Skip Traffic Stripe (paint)	501-1000+	LF	\$ 1.73
170	6" Dotted Guide Lines (paint)	1-50	LF	\$ 2.88
171	6" Dotted Guide Lines (paint)	51-100	LF	\$ 2.30
172	6" Dotted Guide Lines (paint)	101-150+	LF	\$ 1.73
173	Directional Arrows (Paint)	1-10	EA	\$ 46.00
174	Directional Arrows (Paint)	11-50	EA	\$ 34.50
175	Directional Arrows (Paint)	51+	EA	\$ 28.75
176	Pavement Messages (Paint)	1-10	EA	\$ 69.00
177	Pavement Messages (Paint)	11-50	EA	\$ 57.50
178	Pavement Messages (Paint)	51+	EA	\$ 40.25
179	8" Solid Traffic Stripe (Paint)	1-200	LF	\$ 3.45

180	8" Solid Traffic Stripe (Paint)	201-500	LF	\$ 2.30
181	8" Solid Traffic Stripe (Paint)	501-1000+	LF	\$ 1.73
182	6" Solid Stripe/Extru. Thermo (white)	1-200	LF	\$ 3.34
183	6" Solid Stripe/Extru. Thermo (white)	201-500	LF	\$ 2.88
184	6" Solid Stripe/Extru. Thermo (white)	501-1000+	LF	\$ 2.30
185	6" Solid Stripe/Extru. Thermo (yellow)	1-200	LF	\$ 3.34
186	6" Solid Stripe/Extru. Thermo (yellow)	201-500	LF	\$ 2.88
187	6" Solid Stripe/Extru. Thermo (yellow)	501-1000+	LF	\$ 2.30
188	12" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$ 8.05
189	12" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$ 6.90
190	12" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$ 5.75
191	18" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$ 8.63
192	18" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$ 7.48
193	18" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$ 6.33
194	24" Solid Traffic Stripe/Extru. Thermo	1-25	LF	\$ 16.10
195	24" Solid Traffic Stripe/Extru. Thermo	26-50	LF	\$ 13.80
196	24" Solid Traffic Stripe/Extru. Thermo	51-100+	LF	\$ 11.50
197	6" Skip Traffic Stripe/Extru. Thermo	1-200	LF	\$ 2.88
198	6" Skip Traffic Stripe/Extru. Thermo	201-500	LF	\$ 2.59
199	6" Skip Traffic Stripe/Extru. Thermo	501-1000+	LF	\$ 2.30
200	6" Dotted Guide Lines/Extru. Thermo	1-50	LF	\$ 2.88
201	6" Dotted Guide Lines/Extru. Thermo.	51-100	LF	\$ 2.59
202	6" Dotted Guide Lines/Extru. Thermo.	101-150+	LF	\$ 2.30
203	Directional Arrows / Extru. Thermo.	1	EA	\$ 86.25
204	Preformed Symbol	1	EA	\$ 345.00
205	Pavement Messages / Extru. Thermo.	1	EA	\$ 207.00
206	8" Solid Traffic Stripe / Extru. Thermo	1-200	LF	\$ 4.03
207	8" Solid Traffic Stripe / Extru. Thermo	201-500	LF	\$ 2.88
208	8" Solid Traffic Stripe / Extru. Thermo	501-1000+	LF	\$ 2.30
209	Remove Ex. Pavement Markings(paint)	1-100	SF	\$ 3.45
210	Remove Ex. Pavement Markings(paint)	101-300	SF	\$ 2.88
211	Remove Ex. Pavement Markings(paint)	301-500+	SF	\$ 2.59
212	Rem. Ex. Pavement Markings(thermo)	1-100	SF	\$ 4.60
213	Rem. Ex. Pavement Markings(thermo)	101-300	SF	\$ 4.31
214	Rem. Ex. Pavement Markings(thermo)	301-500+	SF	\$ 4.03
TOTAL BID AMOUNT OF ITEMS 5 to 214 ABOVE				\$122,409.03
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
HOT-IN-PLACE (With Virgin Top Course) Asphalt Recycling				
215	Asphalt Recycling	1 - 10,000	SY	NB
216	Asphalt Recycling	10,001 - 50,000	SY	NB
217	Asphalt Recycling	50,001+	SY	NB
218	Recycling Agent	1 - 10,000	GAL	NB
219	Recycling Agent	10,001 - 50,000	GAL	NB
220	Recycling Agent	50,001+	GAL	NB
HOT-IN-PLACE (100%) Asphalt Recycling				
221	Base Course HIPR	1 - 10,000	SY	NB

222	Base Course HIPR	10,001 - 50,000	SY	NB
223	Base Course HIPR	50,001+	SY	NB
224	2" Complete HIPR	1 - 10,000	SY	NB
225	2" Complete HIPR	10,001 - 50,000	SY	NB
226	2" Complete HIPR	50,001+	SY	NB
227	Asphalt Recycling Agent	1 - 10,000	SY	NB
228	Asphalt Recycling Agent	10,001 - 50,000	SY	NB
229	Asphalt Recycling Agent	50,001+	SY	NB
TOTAL BID AMOUNT OF ITEMS 215 to 229 ABOVE				\$ -
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
Specialty Paving Methods				
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-1	Rut Fill / Scratch Course (Micro)	1-50	TN	\$ 355.00
S-2	Rut Fill / Scratch Course (Micro)	51-100	TN	\$ 305.00
S-3	Rut Fill / Scratch Course (Micro)	101+	TN	\$ 260.00
S-4	Single Micro Surface 20-24 lbs	1-10,000	SY	\$ 4.40
S-5	Single Micro Surface 20-24 lbs	10,001 - 50,000	SY	\$ 3.65
S-6	Single Micro Surface 20-24 lbs	50,001+	SY	\$ 3.05
S-7	Double Micro Surface 30-34 lbs	1-10,000	SY	\$ 5.75
S-8	Double Micro Surface 30-34 lbs	10,001 - 50,000	SY	\$ 4.95
S-9	Double Micro Surface 30-34 lbs	50,001+	SY	\$ 4.65
TOTAL BID AMOUNT OF ITEMS S-1 to S-9 ABOVE				\$ 946.45
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-10	Single Chip Seal -#89 Granite	1-10,000	SY	\$ 5.55
S-11	Single Chip Seal -#89 Granite	10,001 - 50,000	SY	\$ 3.30
S-12	Single Chip Seal -#89 Granite	50,001+	SY	\$ 3.05
S-13	Double Chip Seal -#57 w #89 Granite	1-10,000	SY	\$ 6.75
S-14	Double Chip Seal -#57 w #89 Granite	10,001 - 50,000	SY	\$ 5.10
S-15	Double Chip Seal -#57 w #89 Granite	50,001+	SY	\$ 4.65
TOTAL BID AMOUNT OF ITEMS S-10 to S-15 ABOVE				\$ 28.40
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-16	Full Depth Reclamation /6"-9"	1-10,000	SY	\$ 13.25
S-17	Full Depth Reclamation /6"-9"	10,001 - 50,000	SY	\$ 7.65
S-18	Full Depth Reclamation /6"-9"	50,001+	SY	\$ 7.10

S-19	Full Depth Reclamation 9"-12"	1-10,000	SY	\$ 13.75
S-20	Full Depth Reclamation 9"-12"	10,001 - 50,000	SY	\$ 8.25
S-21	Full Depth Reclamation 9"-12"	50,001+	SY	\$ 7.90
S-22	Cement for Reclamation	1	TN	\$ 190.00
S-23	Emulsion for Reclamation	1	Gal	\$ 2.85
S-24	Reclaimed Asphalt Paving (RAP)	1-10,000	SY	\$ 18.00
S-25	Reclaimed Asphalt Paving (RAP)	10,001 - 50,000	SY	\$ 15.00
S-26	Reclaimed Asphalt Paving (RAP)	50,001+	SY	\$ 13.00
TOTAL BID AMOUNT OF ITEMS S-16 to S-26 ABOVE				\$ 296.75
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-27	Fog Seal	1- 10,000	SY	\$ 1.10
S-28	Fog Seal	10,001- 50,000	SY	\$ 0.85
S-29	Fog Seal	50,000+	SY	\$ 0.80
TOTAL BID AMOUNT OF ITEMS S-27 to S-29 ABOVE				\$ 2.75
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-30	Cape Seal	1- 10,000	SY	\$ 11.30
S-31	Cape Seal	10,001- 50,000	SY	\$ 8.25
S-32	Cape Seal	50,000+	SY	\$ 7.70
TOTAL BID AMOUNT OF ITEMS S-30 to S-32 ABOVE				\$ 27.25
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-33	In-Place Recycling-Reconstrction	1- 10,000	SY	\$ 24.55
S-34	In-Place Recycling-Reconstrction	10,001- 50,000	SY	\$ 20.70
S-35	In-Place Recycling-Reconstrction	50,000+	SY	\$ 19.50
TOTAL BID AMOUNT OF ITEMS S-33 to S-35 ABOVE				\$ 64.75
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-36	Crack Filling/Sealing	1-500	GAL	\$ 35.00
S-37	Crack Filling/Sealing	501 - 1000	GAL	\$ 33.00
S-38	Crack Filling/Sealing	1,001+	GAL	\$ 30.00

TOTAL BID AMOUNT OF ITEMS S-36 to S-38 ABOVE				\$ 98.00
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	NB
2	Night Work Mobilization	1	%	NB
3	Maintenance of Traffic	1	%	NB
4	Maintenance of Traffic Nightwork	1	%	NB
S-39	Asphalt Rejuvenator	1-50,000	SY	NB
S-40	Asphalt Rejuvenator	50,001 - 100,000	SY	NB
S-41	Asphalt Rejuvenator	100,001+	SY	NB
TOTAL BID AMOUNT OF ITEMS S-39 to S-41 ABOVE				\$ -
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	NB
2	Night Work Mobilization	1	%	NB
3	Maintenance of Traffic	1	%	NB
4	Maintenance of Traffic Nightwork	1	%	NB
S-42	Speed Hump W/ Curbing	1-50	FT	NB
S-43	Speed Hump W/ Curbing	51-100	FT	NB
S-44	Speed Hump W/ Curbing	101+	FT	NB
S-45	Speed Hump No Curbing	1-50	FT	NB
S-46	Speed Hump No Curbing	51-100	FT	NB
S-47	Speed Hump No Curbing	101+	FT	NB
TOTAL BID AMOUNT OF ITEMS S-42 to S-47 ABOVE				\$ -
Item	Description	EstimatedQuantity	Unit of Measure	Unit Price
1	Mobilization	1	%	5%
2	Night Work Mobilization	1	%	10%
3	Maintenance of Traffic	1	%	5%
4	Maintenance of Traffic Nightwork	1	%	10%
S-48	Slurry Seal	1-10,000	SY	\$ 6.00
S-49	Slurry Seal	10,001 - 50,000	SY	\$ 5.10
S-50	Slurry Seal	50,001+	SY	\$ 4.65
TOTAL BID AMOUNT OF ITEMS S-48 to S-50 ABOVE				\$ 15.75

**Quantities are not guaranteed. Final payment will be based on actual quantities.

NAME OF CONTRACTOR: Asphalt Paving Systems, Inc.

BIDDER'S PERSONNEL LIST

MANAGER/SUPERINTENDENT: (For each individual listed, indicate the total years employed by bidder & in this field.)

EMPLOYEE/WORK CREW:

Attach additional pages if necessary to include all personnel.

(PLEASE SEE ATTACHED)

Attachment E

BIDDER'S EQUIPMENT LIST

ITEM	MODEL/YEAR	MANUFACTURER
1.		
Owned by Bidder:	OR Leased from:	
2.		
Owned by Bidder:	OR Leased from:	
3.		
Owned by Bidder:	OR Leased from:	
4.		
Owned by Bidder:	OR Leased from:	
5.		
Owned by Bidder:	OR Leased from:	
6.		
Owned by Bidder:	OR Leased from:	
7.		
Owned by Bidder:	OR Leased from:	
8.		
Owned by Bidder:	OR Leased from:	
9.		
Owned by Bidder:	OR Leased from:	
10.		
Owned by Bidder:	OR Leased from:	
11.		
Owned by Bidder:	OR Leased from:	
12.		
Owned by Bidder:	OR Leased from:	

Attach additional pages if necessary to include all equipment

(PLEASE SEE ATTACHED)

Attachment F

BIDDER'S PREVIOUS EXPERIENCE LIST

The Bidder shall indicate at least five (5) recent Agreements of a non-residential nature, completed or in progress by the Bidder, including, but not limited to, any previous experience similar in size and scope to the Scope of Work indicated in this Invitation to Bid. ***Do not include projects completed or currently underway with the City of Kissimmee.***

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Company/Entity Name	
Contact Name & Title	
Address	
Phone Number / E-mail	
Name and Scope of Contract	
Date of Contract	
Dollar Amount of Contract	\$

Attachment G

NOTICE

IFB2022-002

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

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

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

Company Name: _____

Address: _____

Phone Number: (____) _____

Fax Number: (____) _____

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

Reason for no response to the solicitation:

____ Cannot supply at this time

____ Suitable, but engaged in other work

____ Quantity too small

____ Cannot meet required minimum

____ Opening date does not allow sufficient time to complete

____ Equivalent not presently available

____ Other reasons or remarks: _____

Signature

Attachment H

IDENTICAL TIE BIDS

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

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

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



Vendor's Signature Robert Capoferri, President

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

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

PRODUCER

McKee Risk Management, Inc.
610 Freedom Business Center Drive, Suite 300
King of Prussia, PA 19406-1329

CONTACT NAME: Joseph J. Meola, CIC, CRM

PHONE (A/C, No, Ext): 609 561-4161

FAX (A/C, No): 609 567-2824

E-MAIL ADDRESS: cmoresco@mckeerisk.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Starr Indemnity & Liability Company

38318

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

Asphalt Paving Systems Inc.
500 N. Egg Harbor Road
P O Box 530
Hammononton, NJ 08037

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	X	1000025864221	04/01/2022	04/01/2023	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY		1000008480221	04/01/2022	04/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$		1000586980221	04/01/2022	04/01/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	1000004574	04/01/2022	04/01/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

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

SAMPLE

CERTIFICATE HOLDER

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



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9021 Wire Rd • Zephyrhills, FL 33540
Phone (813) 788-0010 • Fax (813) 788-0020

EQUIPMENT LIST

<u>Quantity</u>	<u>Make</u>	<u>Year</u>	<u>Model</u>	<u>Description</u>
2	Wirtgen	2019	CR3800	Road Profiler / Recycler
2	Wirtgen	2018	210-I	Road Profiler / Recycler
6	Wirtgen	2018	WR250	Reclaimer/Recycler
1	Wirtgen	2017	2000	Cold Planer
2	Wirtgen	2018	150	Cold Planer
1	Caterpillar	2016	D5	Dozer
7	Caterpillar	2017	12M	Grader
6	Caterpillar	2018	14M	Grader
1	Caterpillar	2017	95G	Rubber Tire Loader
3	Caterpillar	2008	938G	Rubber Tire Loader
2	Caterpillar	2010	936F	Rubber Tire Loader
1	Caterpillar	2013	325BL	Hydraulic Excavator
7	Caterpillar	2018	420F	Backhoe
2	Caterpillar	2017	415F	Backhoe
2	Caterpillar	2015	655	Paver
6	Caterpillar	2013	1055	Paver
1	Caterpillar	2016	534	Asphalt Roller
1	Ingersoll Rand	1999	DD90	Asphalt Roller
1	Caterpillar	2016	214C	Asphalt Roller
2	Caterpillar	2016	224C	Asphalt Roller
1	Ingersoll Rand	2009	DD110	Asphalt Roller
3	Caterpillar	2014	CB-64	Roller
8	Caterpillar	2012	534XW	Roller
7	Caterpillar	2007	563C	Roller
1	Caterpillar	2012	433C	Roller
2	Etnyre	2016		Distributor
8	Etnyre	2016		Distributor
10	Western Star	2019	9500	Triaxle Dump Truck
1	Western Star	2019	9500	Triaxle Dump Truck
1	Western Star	2019	9500	Tandem Dump Truck
2	Western Star	2019	9500	Tractor
2	Western Star	2019	9500	Tractor
2	Western Star	2019	9500	Tractor
3	Western Star	2019	9500	Water Truck
5	Western Star	2019	9500	Lowbed Trailer
6				Emulsion Tanker
2	East			Dump Trailer
1	Athey	2014	2TE4DHL	Sweeper
2	Caterpillar	2018	853C	Cold Planer
4	Caterpillar	2003	PS180	Rubber Tire Roller
1	Dynapac	2016	CP271	Rubber Tire Roller
8	Caterpillar	2012	PS360	Rubber Tire Roller
5	Ford	2013-2018	F-9000	Cement Truck
2	Weilert	2016	E-1250	Transfer Vehicle

Additional Equipment Provided Upon Request



9021 Wire Rd • Zephyrhills, FL 33540
Phone (813) 788-0010 • Fax (813) 788-0020

Equipment List

<u>Quantity</u>	<u>Make</u>	<u>Year</u>	<u>Model</u>	<u>Description</u>
9	Bergkamp	2017-2018	M-310	Paver
8	Bergkamp	2017	M-1	Mobil Mix Paver
6	Bergkamp	2018	M-1	Mobil Mix Paver
3	Bergkamp	2018	M-1	Mobil Mix Paver
4	Bergkamp	2020	M-1	Paver
4	Bergkamp	2004	L-9000	Mobile Support
12	(13 CY)	2010	L-9000	Trucks
2	Bergkamp	2008	L-9000	Mobile Support
	(21 CY)		L-9000	Trailers
19	Ford	2015-2019	F450	Stake Body
28	Ford	2014-2019	F450	Utility Body
12	Ford	2014-2019	F450	Crew Cabs
4	Athey Mobil	2015		Broom
9	CAT	2015	PS-130	Rubber Tire Roller
6	CAT	2011-2016	PS-360	Rubber Tire Roller
8	CAT	2014	936g	Wheel Loader
13	CAT	2014-2108	938m	Loader
1	CAT	2019	938m	Loader
2	CAT	2018	926g	Loader
16	Etnyre	2016	Series 6000	Bulk Tanker
12	Fruehauf	1992	6000 gal	Bulk Tanker
14	Heil	1991	6500	Bulk Tanker
16	Etnyre	1990	6000	Bulk Tanker
4	Etnyre	2018	Centenial	Oil Distributor
			(2000)	
6	Etnyre	2018-2020	Black Topper	Oil Distributor
			(2000)	
5	Etnyre	2014	Black Topper	Oil Distributor
			(2000)	
5	Etnyre	2015-2020	Black Topper	Oil Distributor
			(4000)	
1	Etnyre	2017	Model 4WD	Chipper (10-20')
3	Etnyre	2017	Model 4WD	Chipper (11-22')

Additional Equipment Provided Upon Request

Experience of Key Individuals

Asphalt Paving Systems, Inc. – Experience of Key Individuals

Individual's Name	Title	Exp.
Robert Capoferri	CEO	31
Kenneth Messina	Operations Manager	26
Robert Bevilacqua	Project Manager	32
Dave Gannon	Project Manager	28
Thomas Donald	Regional Manager	29
Dennis Williams	Superintendent	22
Leon Rubba	Equipment Operator	11
Jeff Daunoras	Equipment Operator	26
Jay Jewett	Foreman	18
Mike Mobley	Laborer	8
Kenny Cooper	Foreman	10

State of Florida

Department of State

I certify from the records of this office that ASPHALT PAVING SYSTEMS, INC. is a New Jersey corporation authorized to transact business in the State of Florida, qualified on December 4, 2009.

The document number of this corporation is F09000004816.

I further certify that said corporation has paid all fees due this office through December 31, 2022, that its most recent annual report/uniform business report was filed on January 20, 2022, and that its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Twentieth day of January,
2022*



Randy Be
Secretary of State

Tracking Number: 6541290385CC

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

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



Contractor Pre-Qualification (CPQ)



Prequalified Contractors Listing

7/21/2021 8:08:58 AM EST

[Return to Inquiry Menu](#)

Contractor with Name ASPHALT PAVING SYSTEMS, INC.
1-1 of 1 contractors

[Printer Friendly Version](#)

VENDOR NAME	HOME OFFICE ADDRESS	BIDDING OFFICE ADDRESS
ASPHALT PAVING SYSTEMS, INC. F223787755010 EXPIRES: 6/30/2022	PO BOX 530 HAMMONTON, NJ 08037-0530 (609)561-4161	9021 WIRE ROAD ZEPHYRHILLS, FL 33540 (813)788-0010
WORK CLASSES		
DRAINAGE		
GRADING		
* JOINT AND CRACK SEALING		
FLEXIBLE PAVING		
HOT PLANT-MIXED BITUM. COURSES		



FLORIDA DEPARTMENT OF TRANSPORTATION
Report Technical Problems to the Service Desk @ 1-866-955-4357 or email: [Service Desk](#)
Send Prequalification Questions or Comments to [Contracts Administration Office](#)
[Internet Privacy Policy, Disclaimers & Credits](#)



Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Asphalt Paving Systems, Inc.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

P.O. Box 530

6 City, state, and ZIP code

Hammonton, NJ 08037

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

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

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

Social security number

____ - ____ - ____

or

Employer identification number

2 2 - 3 7 8 7 7 5 5

Part II Certification

Under penalties of perjury, I certify that:

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

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

Sign
Here

Signature of
U.S. person ►

Date ► **2.23.2022**

General Instructions

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

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

Purpose of Form

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

- Form 1099-INT (interest earned or paid)

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

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

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

Full Depth Reclamation References

Asphalt Paving Systems, Inc.

Project Name	City of Palm Bay Eldron Unit 41/
Owner	City of Palm Bay (VA Paving Was Prime Contractor)
Contact	Hector Franco
Address	120 Malabar Road SE
	Palm Bay, FL 32907
Telephone Number	321-952-3400
Project Description	FDR (Cement & Emulsion)
Date & Amount	10/1/2019 \$1,071,501.05

Project Name	C12-05-167; Chip Seal and Asphalt Surfacing (Term)
Owner	St Lucie County
Contact	Christopher Lestrangle
Address	2300 Virginia Avenue
	Ft. Pierce, FL 34982
Telephone Number	772-462-2511
Email:	lestranglec@stlucieco.org
Project Description	FDR (Cement & Emulsion)
Date	7/5/16 - 12/31/2019

Project Name	CR-278 (Peacock Rd) Anderson Columbia was prime contractor
Owner	Jackson County
Address	2864 Madison Street
	Marianna, FL 32448
Telephone Number	850-482-9677 (Jackson County)
Contact	Kevin Buchanan (Anderson Columbia)
Email:	Kkevinb@andersoncolumbia.com
Project Description	FDR (Cement & Emulsion)
Date & Amount	Jan. 2020 \$350,000

Project Name	Annual Asphalt Pavement Rehabilitation (Term Contract)
Owner	Pasco County
Contact	Efrain Figueroa
Address	8919 Government Drive
	New Port Richey, FL 34654
Telephone Number	727-834-3601
Email:	efigueroa@pascocountyfl.net
Project Description	FDR (Cement & Emulsion)
Date & Amount	9/30/17 - 12/31/2018 \$5,000,000

Project Name	Full Depth Reclamation Project
Owner	City of Dunedin
Contact	
Address	737 Loudon Avenue, 2nd Floor
	Dunedin, FL 34697
Telephone Number	727-298-3208
Project Description	FDR (Cement & Emulsion)
Date	Sep. 2019

Project Name	Pavement Alternative Methods (term contract)
Owner	Polk County
Contact	Katia Delgado
Address	300 Sheffield Road
	Winter Haven, FL 33880
Telephone Number	863-393-4114
Email:	KatiaDelgado@polk-county.net
Project Description	FDR (Cement & Emulsion)
Date	5/30/17 - 12/31/2018

Project Name	Piggyback of Polk Co. Pavement Alternative Methods (term contract)
Owner	City of St Cloud
Contact	Dianna Rawleigh
Address	1300 9th Street
	St Cloud FL
Telephone Number	407-957-7103
Project Description	FDR (Cement & Emulsion) Nolte Rd
Date & Amount	4/1/2018 \$ 1,450,255.00
Email:	dianna.rawleigh@stcloud.org

Project Name	Piggyback-Pavement Alternative Methods (term contract)
Owner	Brevard County
Contact	Bruce Black
Address	2825 Judge Fran Jamieson Way
	Melbourne, FL 32940
Telephone Number	321-690-6815
Email:	bruce.black@brevardfl.gov
Project Description	FDR (Cement & Emulsion)
Date & Amount	2019-2020 \$2,000,000

Paving References

Asphalt Paving Systems, Inc.

Project Name	Annual Asphalt Pavement Rehabilitation (Term Contract)
Owner	Pasco County
Contact	Michael Silvery
Address	4454 Grand Blvd. New Port Richey, FL 34654
Telephone Number	727-834-3601
Email:	msilvey@pascocountyfl.net
Project Description	Little Road; Milling and Paving
Date & Amount	January 2021 \$ 2,012,572.09

Project Name	Gulfport Resurfacing
Owner	City of Gulfport
Contact	Kendrix Anderson
Address	2401 53rd Street South Gulfport, FL 33707
Telephone Number	727-893-1083
Email:	Kanderson@mygulfport.us
Project Description	Milling and Paving
Date & Amount	January 2021 \$ 371,000.00

Project Name	Street Rehabilitation
Owner	City of St. Pete Beach
Contact	Brett Warner
Address	155 Corey Avenue St. Pete Beach, FL 33706
Telephone Number	727-363-9254
Email:	N/A
Project Description	Milling and Paving
Date & Amount	January 2021 \$ 905,428.30

Project Name	Bid No. 20-062; Roadway Surfacing, Recontruction and Preservation
Owner	St Lucie County
Contact	Christopher Lestrangle
Address	2300 Virginia Avenue Ft. Pierce, FL 34982
Telephone Number	772-462-2511
Email:	lestranglec@stlucieco.org
Project Description	FDR, Chip Seal, and Mill & Paving
Date & Amount	January 2021 \$ 1,522,454.01

Project Name	Annual Resurfacing FY 18-19
Owner	City of Zephyrhills
Contact	Shane LeBlanc
Address	5335 8th Street
	Zephyrhills, FL 33542
Telephone Number	813-780-0022
Email	sleblanc@ci.zephyrhills.fl.us
Project Description	Mill, Paving, Micro and Chip Seal
Date & Amount	1/1/2019 \$391,557.40

Micro Surfacing & Crack Seal References

1.

Project Name	C12-05-167; Chip Seal and Asphalt Surfacing
Owner	St Lucie County
Contact	Christopher Lestrangle
Address	2300 Virginia Avenue
	Ft. Pierce, FL 34982
Telephone Number	772-462-2511
Project Description	MICRO / CRACK SEAL / FDR / CHIP
Date	7/5/16 - Current
Email	lestranglec@stlucieco.org

2.

Project Name	Annual Micro Surfacing
Owner	Osceola County
Contact	Shane King
Address	1 Courthouse Square
	Kissimmee, FL 34741
Telephone Number	407-742-7522
Project Description	CHIP / FOG/MICRO/CAPE SEAL
Date	2019-2020
Email	Shane.King@Osceola.org

3.

Project Name	Annual Resurfacing FY 18-19
Owner	City of Zephyrhills
Contact	Shane LeBlanc
Address	5335 8th Street
	Zephyrhills, FL 33542
Telephone Number	813-780-0022
Project Description	MICRO / SP 9.5 / CHIP/CAPE SEAL
Date	Jan-19
Email	sleblanc@ci.zephyrhills.fl.us

5.

Project Name	2017 Roadway Resurfacing and Striping
Owner	City of Seminole
Contact	Jeremy Hockenbury
Address	9199 113th Street N
	Seminole, FL 33772
Telephone Number	727-397-6383
Project Description	MICRO / CRACK SEAL / SP 9.5
Date & Amount	7/1/17 - \$155,000
Email	jhockenbury@myseminole.com

- | | | |
|-----|---------------------|--|
| 6. | Project Name | Annual Microsurfacing Project |
| | Owner | City of Ft. Lauderdale |
| | Contact | Barbara Howell |
| | Address | 100 N. Andrews Avenue |
| | | Fort Lauderdale |
| | Telephone Number | 954-828-4505 |
| | Project Description | MICRO / CRACK SEAL |
| | Date | December 5th 2017-2019 |
| | Email | bhowell@fortlauderdale.gov |
| | | |
| 7. | Project Name | Annual Pavement Preservation Treatments |
| | Owner | City of Lakeland |
| | Contact | Troy McCain |
| | Address | 407 Fairway Drive |
| | | Lakeland, FL 33801 |
| | Telephone Number | 863-834-3306 |
| | Project Description | MICRO / CRACK SEAL/CAPE SEAL |
| | Date & Amount | Jan-19 |
| | Email | troy.mccain@lakelandgov.net |
| | | |
| 8. | Project Name | Pavement Alternative Methods (term contract) |
| | Owner | Polk County |
| | Contact | Katia Delgado |
| | Address | 300 Sheffield Road |
| | | Winter Haven, FL 33880 |
| | Telephone Number | 863-393-4114 |
| | Project Description | CIR / SP 9.5 / MICRO / CHIP / FDR / CRACK SEAL/CAPE SEAL |
| | Date & Amount | 5/30/17 -2019 \$3,000,000 |
| | Email | KatiaDelgado@polk-county.net |
| | | |
| 9. | Project Name | RFB RD 95-15 Pavement Preservation |
| | Owner | Okaloosa County |
| | Contact | Bryan Moore |
| | Address | 302 N. Wilson Street, Suite 203 |
| | | Crestview, FL 32526 |
| | Telephone Number | 850-689-5772 |
| | Project Description | CHIP / MICRO / CRACK SEAL |
| | Date | Apr-19 |
| | Email | bmoore@co.okaloosa.fl.us |
| | | |
| 10. | Project Name | Yearly Road Building Services |
| | Owner | Manatee County |
| | Contact | Brian Martineau |

	Address	1026 26th Avenue E Bradenton, FL 34208
	Telephone Number	941-720-1085
	Project Description	Micro-surfacing/ Chip Seal
	Date & Amount	3/1/16 -2019 \$850,000.00
	Email	brian.martineau@mymanatee.org
11	Project Name	Asphalt Pavement Preservation
	Owner	City of Jacksonville
	Contact	Janet Duffy
	Address	6455 Powers Ave Jacksonville, FL 32217
	Telephone Number	904-733-1478
	Project Description	Micro-surfacing
	Date	FY 2018-2019
	Email	jduffy@eismanrusso.com
12	Project Name	Pavement Preservation
	Owner	City of Tallahassee
	Contact	Art Sivilla
	Address	300 S. Adams St Tallahassee, FL 32301
	Telephone Number	850-570-7758
	Project Description	Micro-surfacing / Chip Seal / Cape Seal
	Date & Amount	FY 2018-2019
	Email	arturo.sivilla@talgov.com
13	Project Name	Michigan Blvd. Reclamation Project
	Owner	City of Dunedin
	Contact	
	Address	737 Loudon Avenue, 2nd Floor Dunedin, FL 34697
	Telephone Number	727-298-3208
	Project Description	FDR / SP 9.5/Micro
	Date & Amount	2018
14	Project Name	RFQ 17619, 2: Neighborhood Resurfacing and Pavement Treatment
	Owner	Hillsborough County BOCC
	Contact	
	Address	601 E. Kennedy Blvd, 22nd Floor Tampa, FL 33602
	Telephone Number	813-307-1868
	Project Description	MICRO/CHIP SEAL/CAPE SEAL
	Date & Amount	2019

Cold-in-Place Recycling References

Project Name	<u>Cold In Place Bituminous Base Recycling with Asphalt Resurfacing</u>
Owner	<u>Orange County</u>
Contact	<u>Eddy Quinn</u>
Address	<u>4200 S John Young Pkwy</u>
	<u>Orlando, FL 32839</u>
Telephone Number	<u>407-836-7960</u>
Project Description	<u>CIR</u>
Date & Amount	<u>5/30/17 -2019 \$3,391,350.00</u>
	<u>Edward.Quinn@ocfl.net</u>

Project Name	<u>Lorraine Road Cold Recycle</u>
Owner	<u>Manatee County</u>
Contact	<u>Brian Martineau</u>
Address	<u>1026 26th Avenue E</u>
	<u>Bradenton, FL 34208</u>
Telephone Number	<u>941-720-1085</u>
Project Description	<u>CIR Clay Gully Rd</u>
Date & Amount	<u>2019</u>

Project Name	<u>2015-2016 Annual Asphalt Pavement Rehabilitation</u>
Owner	<u>Pasco County</u>
Contact	<u>Efrain Figueroa</u>
Address	<u>8919 Government Drive</u>
	<u>New Port Richey, FL 34654</u>
Telephone Number	<u>727-834-3601</u>
Project Description	<u>FDR / CIR / MICRO / CRACK SEAL</u>
Date & Amount	<u>9/30/17 -2019 \$5,000,000</u>

Project Name	<u></u>
Owner	<u>Seminole County</u>
Contact	<u>Calvin Landers</u>
Address	<u>100 E. 1st Street</u>
	<u>Sanford, FL 32771</u>
Telephone Number	<u>407-665-2332</u>
Project Description	<u>CIR Lake Markham Rd</u>
Date & Amount	<u>4/1/2018 \$601,660.00</u>
	<u>clanders02@seminolecountyfl.gov</u>

Project Name	<u>Lakewood Ranch Blvd CIR / AJAX</u>
Owner	<u>Manatee County</u>

Contact	Brian Martineau
Address	1026 26th Avenue E
	Bradenton, FL 34208
Telephone Number	941-720-1085
Project Description	CIR Lakewood Ranch Blvd
Date & Amount	3/14/2019 \$728,042.00

**THE E-VERIFY
MEMORANDUM OF UNDERSTANDING
FOR EMPLOYERS**

**ARTICLE I
PURPOSE AND AUTHORITY**

The parties to this agreement are the Department of Homeland Security (DHS) and the <employer_name> (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

**ARTICLE II
RESPONSIBILITIES**

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - a. Notice of E-Verify Participation
 - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.

4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
 5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
 - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.
 6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
 - a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
 - b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.
- Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.
7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
 8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures.
 - a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly

employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status

(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon

reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

- b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.
- c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.
- d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.
- e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:
- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
 - ii. The employee's work authorization has not expired, and
 - iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).
- f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:
- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
 - ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
 - iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with

Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.

4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

a. Automated verification checks on alien employees by electronic means, and

- b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify

case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.

4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the

Company ID Number: 1215880

employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

- a. Scanning and uploading the document, or
- b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

ARTICLE IV SERVICE PROVISIONS

A. NO SERVICE FEES

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V MODIFICATION AND TERMINATION

A. MODIFICATION

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.

B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI

PARTIES

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.
- E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to,

Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.



Company ID Number: 1215880

Approved by:

Employer Asphalt Paving Systems, Inc.	
Name (Please Type or Print) Michelle Donio	Title
Signature Electronically Signed	Date 07/22/2017
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 07/22/2017



Company ID Number: 1215880

Information Required for the E-Verify Program	
Information relating to your Company:	
Company Name	Asphalt Paving Systems, Inc.
Company Facility Address	500 N Egg Harbor Road Hammononton, NJ 08037
Company Alternate Address	P.O. Box 530 Hammononton, NJ 08037
County or Parish	ATLANTIC
Employer Identification Number	223787755
North American Industry Classification Systems Code	237
Parent Company	
Number of Employees	100 to 499
Number of Sites Verified for	2



Company ID Number: 1215880

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

FLORIDA	1 site(s)
NEW JERSEY	1 site(s)

Company ID Number: 1215880

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name Michelle Donio
Phone Number (609) 561-4161 ext. 207
Fax Number (609) 567-2824
Email Address mdonio@asphaltpavingqsystems.com

Name Tammi Massey
Phone Number (609) 561-4161 ext. 214
Fax Number (609) 567-2824
Email Address tmassey@asphaltpavingqsystems.com



Company ID Number: 1215880

This list represents the first 20 Program Administrators listed for this company.

Page 17 of 17 E-Verify MOU for Employers | Revision Date 06/01/13

EXHIBIT "C"



**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 by _____ from the receipt of the official Notice to Proceed from the City.

TASK

FEE

1)	
2)	
3)	
4)	
5)	
6)	
7)	
	\$ -

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: _____

Approved By: _____
(Signature)

Title/Position: _____

City Commission Approval Date: _____

Approved By: _____
(Signature)

Title/Position: _____

Public Works and Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165



DATE: 12/9/2022

TO: City of Kissimmee Public Works
2213 W. Mabette Street
Kissimmee, FL 34741
Attn: Nagel, Altrui

FROM: Asphalt Paving Systems, Inc.
8940 Gall Blvd
Zephyrhills, FL 33541
Ph: 813-788-0010
Fx: 813-788-0020

RE: Dyer Blvd - Mill & Overlay

City of Kissimmee Alternate Paving Methods

Item No	Description	Units	Quantity	Unit Price	Total Price
1	Mobilization	5%	1	\$ 43,337.26	\$ 43,337.26
3	Maintenance of Traffic	5%	1	\$ 43,337.26	\$ 43,337.26
63	Milling 2"	SY	33,543	\$ 5.94	\$ 199,245.42
80	Asphalt Concrete Type S-1	TON	3,690	\$ 155.00	\$ 571,950.00
154	6" Solid Traffic Stripe (paint) (white)	LF	11,680	\$ 0.81	\$ 9,460.80
157	6" Solid Traffic Stripe (paint) (yellow)	LF	9,565	\$ 0.81	\$ 7,747.65
165	24" Solid Traffic Stripe	LF	500	\$ 10.35	\$ 5,175.00
169	6" Skip Traffic Stripe	LF	2,375	\$ 1.73	\$ 4,108.75
173	Directional Arrows	EA	30	\$ 46.00	\$ 1,380.00
176	Pavement Messages	EA	4	\$ 69.00	\$ 276.00
184	6" Solid Traffic Stripe (thermo) (white)	LF	11,680	\$ 2.30	\$ 26,864.00
187	6" Solid Traffic Stripe (thermo) (yellow)	LF	9,565	\$ 2.30	\$ 21,999.50
195	24" Solid Traffic Stripe (thermo)	LF	500	\$ 13.80	\$ 6,900.00
199	6" Skip Traffic Stripe (thermo)	LF	2,375	\$ 2.30	\$ 5,462.50
203	Directional Arrows (thermo)	EA	30	\$ 86.25	\$ 2,587.50
205	Pavement Messages (thermo)	EA	4	\$ 207.00	\$ 828.00
151	Reflective Pavement Markers (RPM's)	EA	480	\$ 5.75	\$ 2,760.00
	Prices include: Density testing, and tack coat.				
	Price does not include: base repair after milling, parking areas off roadway, concrete repair, or utility adjustments.				
					\$ 953,419.63

Sincerely,

Mark Rohrbach

Mark Rohrbach
Estimator
Asphalt Paving Systems, Inc.



DATE: 12/9/2022

TO: City of Kissimmee Public Works
2213 W. Mabette Street
Kissimmee, FL 34741
Attn: Nagel, Altrui

FROM: Asphalt Paving Systems, Inc.
8940 Gall Blvd
Zephyrhills, FL 33541
Ph: 813-788-0010
Fx: 813-788-0020

RE: W Carroll Street

City of Kissimmee Alternate Paving Methods

Item No	Description	Units	Quantity	Unit Price	Total Price
1	Mobilization	5%	1	\$ 18,885.65	\$ 18,885.65
3	Maintenance of Traffic	5%	1	\$ 18,885.65	\$ 18,885.65
63	Milling 2"	SY	13,760	\$ 5.94	\$ 81,734.40
80	Asphalt Concrete Type S-1	TON	1,515	\$ 155.00	\$ 234,825.00
154	6" Solid Traffic Stripe (paint) (white)	LF	4,130	\$ 0.81	\$ 3,345.30
157	6" Solid Traffic Stripe (paint) (yellow)	LF	4,330	\$ 0.81	\$ 3,507.30
165	24" Solid Traffic Stripe	LF	42	\$ 10.35	\$ 434.70
169	6" Skip Traffic Stripe	LF	2,600	\$ 1.73	\$ 4,498.00
173	Directional Arrows	EA	7	\$ 46.00	\$ 322.00
184	6" Solid Traffic Stripe (thermo) (white)	LF	4,130	\$ 2.30	\$ 9,499.00
187	6" Solid Traffic Stripe (thermo) (yellow)	LF	4,330	\$ 2.30	\$ 9,959.00
195	24" Solid Traffic Stripe (thermo)	LF	42	\$ 13.80	\$ 579.60
199	6" Skip Traffic Stripe (thermo)	LF	2,600	\$ 2.30	\$ 5,980.00
203	Directional Arrows (thermo)	EA	7	\$ 86.25	\$ 603.75
151	Reflective Pavement Markers (RPM's)	EA	3,900	\$ 5.75	\$ 22,425.00
	Prices include: Density testing, and tack coat.				
	Price does not include: base repair after milling, concrete repair, or utility adjustments.				
					\$ 415,484.36

Sincerely,

Mark Rohrbach

Mark Rohrbach
Estimator
Asphalt Paving Systems, Inc.

ITEM 7.U

Option Agreement Between The City of Kissimmee, Florida, Diamond Elite Kissimmee LLC and Diamond Elite Kissimmee Apartments LLC

Request

Approval of the Option Agreement between the City of Kissimmee, Diamond Elite Kissimmee LLC, and Diamond Elite Kissimmee Apartments LLC.

Explanation

The City Commission established as one of their top priorities to provide emergency housing and services to serve persons experiencing homelessness and to progressively move residents to permanent housing. In furtherance of said goals, the City desires to conduct due diligence for the purchase of the Owner's properties, which consist of apartment buildings and a hotel located at 1815 W. Vine Street and 1555 Hollywood Street. The Parties agree to enter into this Option Agreement to provide the City with an opportunity to conduct thorough due diligence to determine the desirability of acquiring the Property. The City shall deposit two hundred sixty thousand dollars in escrow to secure the option to purchase the property.

Recommendation

Staff recommends approval of the Option Agreement between the City of Kissimmee, Diamond Elite Kissimmee LLC, and Diamond Elite Kissimmee Apartments LLC.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter: Desiree Matthews

Attachment(s):

1. (S) Option Agreement Diamond Elite Kissimmee, LLC

**OPTION AGREEMENT
BETWEEN THE CITY OF KISSIMMEE, FLORIDA
DIAMOND ELITE KISSIMMEE LLC
AND
DIAMOND ELITE KISSIMMEE APARTMENTS LLC**

THIS OPTION AGREEMENT is made and entered into by and between the **CITY OF KISSIMMEE**, a Florida municipal corporation, with a principal address of 101 Church Street, Kissimmee, FL 34741 (hereinafter referred to as the "**CITY**"), and **DIAMOND ELITE KISSIMMEE APARTMENTS LLC**, and **DIAMOND ELITE KISSIMMEE LLC**, each a Delaware limited liability company, with the mailing address of 121 West Florence Blvd., Casa Grande, Arizona 85122 (hereinafter collectively referred to as "Owner" or "**OWNERS**").

W I T N E S S E T H:

WHEREAS, the City Commission established as one of their priorities to provide emergency, low demand, bridge housing, homeless support services, and comprehensive wraparound support services, to serve persons experiencing homelessness and to progressively move residents to permanent stable housing; and

WHEREAS, in furtherance of the City Commission goals and objectives the City desires to conduct due diligence for the purchase of the Owners' properties which consist of apartment buildings and a hotel located at 1815 W. Vine Street (Parcel Id. 16-25-29-1479-000D-0060- apartments) and 1555 Hollywood Street (Parcel Id 16-25-29-1470-000C-0110- hotel) and more particularly described on Exhibit A (hereinafter collectively referred to as the "Option Parcels"); and

WHEREAS, The Parties agree to enter into this Option Agreement to provide the City an opportunity to conduct thorough due diligence to determine the desirability of acquiring the Option Parcels; and

WHEREAS, the City shall deposit earnest money in the amount of Two Hundred Sixty Thousand Dollars (\$260,000) in escrow to secure the option to purchase the Option Parcels.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, the **CITY** and **OWNERS** agree as follows:

SECTION 1. INTRODUCTION

1. Recitals. The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

3. Definitions. The following terms, whenever used in this Agreement, shall have only the meanings set forth below, unless such meanings are expressly modified elsewhere herein.

- a. Appraisal. CITY shall bear the cost of hiring a disinterested real estate appraiser with MAI accreditation and at least ten (10) years' experience in appraising multifamily properties in Osceola County, Florida to determine the fair market value of the Option Parcels (the "Appraised Value") and deliver to the City and Owners an appraisal report within thirty-five (35) days from the Effective Date. OWNERS shall provide to the appraiser information reasonably requested, if available, necessary to complete the appraisal assignment.
- b. Business Day. Any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of Florida or is a day on which banking institutions located in Florida are authorized or required by law or other governmental action to close.
- c. Effective Date. The Effective Date shall be the date the last of the City or Owner executes this Agreement.
- d. Owner Property. The site owned by Owners which the City desires to purchase and is the subject of this Agreement, and referred to as Option Parcels, as more particularly described on Exhibit A, attached hereto and made a part hereof.
- e. City's Termination Notice. A notice in the form of a letter from the City to Owners terminating this Option Agreement for one of the reasons set forth in Section 7.
- f. Owners' Termination Notice. A notice in the form of a letter from Owners to the City terminating the Option under Section 3.
- g. Mutual Release. An acknowledgment of termination of this Agreement and a mutual release of rights, claims and actions under this Agreement in the form provided in Exhibit B, attached to this Agreement, and made a part hereof.
- h. Agreement or Option Agreement. This Option Agreement and all Exhibits attached hereto and incorporated herein by reference
- i. Option Expiration Date. 5:00 p.m. (Eastern time) on March 3, 2023.
- j. Exploratory Period. The period commencing on the Effective Date and expiring on the Option Expiration Date, allowing the City to conduct due diligence and explore the feasibility of purchasing the Option Parcels for the purpose of providing bridge housing and services to the homeless.
- k. Closing Date. A Business Day that is mutually acceptable to the City and Owners no later than sixty (60) days after the date of the Exercise Notice, TIME OF THE ESSENCE.
- l. Purchase Price. Thirteen Million Dollars (\$13,000,000).

SECTION 2. GRANT OF OPTION. On the terms of this Option Agreement, OWNERS hereby grant to CITY the right to purchase the Option Parcels "as is" from OWNERS on or before the Closing Date for the Purchase Price (the "Option"). The City may exercise the Option at any time

before the Option Expiration Date, TIME OF THE ESSENCE. If the City elects to exercise the Option, the City shall deliver to Owners written notice of such election before the Option Expiration Date (the “Exercise Notice”). If, as of the Option Expiration Date, Owners have received neither the Exercise Notice nor the City’s Termination Notice, then the earnest money shall be delivered to Owner, this Option Agreement shall terminate and be of no further force or effect, and the City and Owner shall be relieved of all further liability to one another under this Option Agreement, at law or in equity (except for those obligations that expressly survive such termination). If the City timely exercises the Option but subsequently fails to acquire the Option Parcels by the Closing Date, then the earnest money shall be delivered to Owner, this Option Agreement shall terminate and be of no further force or effect, and the City and Owner shall be relieved of all further liability to one another under this Option Agreement, at law or in equity (except for those obligations that expressly survive such termination).

1. **Option Earnest Money Deposit.** The City shall pay a deposit in escrow to a title company in the amount of Two Hundred Sixty Thousand Dollars (\$260,000) in funding allocated by the City as earnest money for the exploration of the purchase of the real property identified as the Option Parcels from OWNERS (the “earnest money”). Under the terms and conditions of this Agreement, CITY may use a combination of funding sources, and has allocated CDBG funds to be used in accordance with all requirements imposed by federal statutes, regulations, and the terms of this Option Agreement. The earnest money deposited in escrow will be applied to the purchase of the Option Parcel, as negotiated by the parties. Except as set forth in this Option Agreement, the earnest money shall not be refundable to the City. Additionally, on the Effective Date the City paid to Owners Ten Dollars (\$10) as independent consideration for the grant of the Option.
2. **Option Terminated by City.** If CITY duly and timely terminates this Option Agreement as provided for herein on or before the Option Expiration Date, the City shall promptly deliver to Owner one (1) copy of the Mutual Release, fully completed, originally executed and dated by City. The City may terminate the Option Agreement before the Option Expiration Date, and retain the earnest money, if the Appraised Value is less than Thirteen Million Dollars or if environmental impact studies and physical inspection of the property show contamination or other health and safety issues. If the City timely terminates for those reasons, the earnest money deposited in escrow shall be returned to the City. If the City terminates the Option Agreement for any other reason, the earnest money promptly shall be delivered to Owner and Owner shall retain the earnest money deposited in escrow.
3. **Option Terminated by Owner.** Notwithstanding anything to the contrary in this Option Agreement, Owner may terminate this Option Agreement by sending written notice of termination to the City at any time (even after the City sends the Exercise Notice) if the Appraised Value exceeds Thirteen Million Dollars unless the City agrees in writing (within ten (10) Business Days after receiving the Owners’ Termination Notice) to increase the Purchase Price to the Appraised Value. If Owner duly and timely terminates this Option Agreement as provided for herein on or before the Option Expiration Date, Owner shall promptly deliver to the City one (1) copy of the Mutual Release, fully completed, originally

executed and dated by Owner. If the Owner elects to terminate the Option Agreement for any reason the City shall retain the earnest money deposited in escrow.

4. **Closing.** Upon the City's timely exercise of the Option, Owners shall sell and convey to the City, and the City shall purchase and acquire from Owners, the Option Parcels "as is" for the Purchase Price on the terms of this Option Agreement without the need for the City and Owners to enter into any further agreement. The closing of the transactions this Option Agreement contemplates (the "Closing") shall be conducted by the delivery of documents and funds into escrow with a title company in Osceola County, Florida on or before the Closing Date without the necessity of personal attendance by the parties. At the Closing, the City shall pay (by wire transfer of immediately available federal funds) the Purchase Price to Owners and each of the Owners shall execute and deliver to the City a special warranty deed in customary Florida form conveying its Option Parcel to the City "as is" without any representation or warranty (except for the special warranty in the deed). The City and Owners shall each pay half of any transfer, recordation, documentary stamp or similar taxes on the deed. Each party shall pay its own attorneys' fees (if any) in connection with this transaction. The City shall pay all other costs associated with the transactions this Option Agreement contemplates. All items of income and expense with respect to the ownership and operation of the Option Parcels shall be apportioned between Owners and the City as of 11:59 p.m. on the day preceding the Closing.
5. **Entry, Inspection and Testing.** During the Exploratory Period, the CITY, its representatives and agents may enter upon the Option Parcels at reasonable times, with reasonable notice, to perform reasonably necessary inspections and tests. Notwithstanding the foregoing, neither CITY, its affiliates, nor its agents, shall have any right to make soils borings, drill testing, monitoring wells, to penetrate the surface of the Option Parcels or otherwise cause to be performed any invasive or intrusive testing without OWNERS' prior written consent. CITY, its officers, and its agents, shall exercise due care in entering upon, inspecting and (if Owners permit) testing the Option Parcels and shall perform all such entry, inspection and testing in a professional manner so as to minimize any damage to or disruption of the Option Parcel. The City shall promptly cause to be repaired any damage to the Option Parcels resulting from such entry, inspection or testing and shall return the Option Parcels as nearly as possible to their condition prior to such entry, inspection or testing. The City shall indemnify, hold harmless and, upon request, defend (with counsel acceptable to Owners) Owners from and against any and all demands, claims, causes of action, suits, damages, liabilities, losses, liens, costs and expenses (including reasonable attorneys' fees and costs) suffered or incurred by, imposed on or asserted against Owners caused by or arising out of the activities of the City or its employees, contractors, agents or representatives upon the Option Parcel. The City's obligations under the two preceding sentences shall survive any termination of this Option Agreement.

6. **OWNERS Deliverables to CITY.** After the Effective Date of this Option Agreement, it is acknowledged that Owners will deliver to CITY, or directly to the Appraiser, any of the following items Owners may have in their possession. Owners are under no obligation to provide the following, if it does not already exist.

- a. Contracts. A copy of each unrecorded contract and or agreement, if any, contained in Owners' files for the Option Parcels, which directly concern and expressly refers to the Option Parcels or any portion thereof;
- b. A copy of all documents related to Title of the Owners Property;
- c. Copies of any environmental reports related to the Owners Property;
- d. A copy of any surveys related to the Owners Property;
- e. Copies of plans and specifications of all structures and facilities currently located on the Owners Property together with copies of maps showing the locations of existing utilities serving the Owners Property to the extent available; and
- f. Copies, if any, of all geotechnical reports that pertain to the Owners Property.

Throughout the Exploratory Period, OWNERS shall also deliver to CITY, or to the Appraisers copies of such other items relating to the Option Parcels as OWNER is required to deliver to CITY under applicable law and as such items may become available in the due course of business during the Exploratory Period.

The City shall keep confidential, and not disclose, any information regarding the terms of this Option Agreement or obtained by or on behalf of the City in connection with the Option Parcels except (i) if already in the public domain or available to the City from another source (other than by breach of any confidentiality obligation), (ii) for disclosure to the City's employees, contractors, agents and representatives for the purpose of evaluating the Option Parcels or (iii) with at least three (3) days' advance written notice to Owners, as required by applicable law or legal process. The confidentiality obligation in this paragraph shall survive termination of this Option Agreement.

Owners do not make any representation or warranty, and expressly disclaim all representations and warranties, and shall have no liability, regarding any information or materials delivered or made available in connection with this Option Agreement.

7. **Contingencies Applicable to City's Ability to Exercise Option.**

- a. City Commission approval of the Purchase Price if it exceeds Thirteen Million Dollars.

- b. Environmental Review & Inspection Clearance, safe and free of hazards.
 - c. Appraisal at or above Thirteen Million Dollars.
8. **Eminent Domain.** The City shall not seek to acquire any or all of the Option Parcels through eminent domain. This Section 8 shall survive the termination of this Option Agreement.

SECTION 3: GENERAL TERMS AND CONDITIONS.

1. **Entire Agreement.** This Option Agreement contains the entire agreement between the parties concerning the Option Parcels and supersedes all prior written or oral agreements between the parties to this Option Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both City and Owners. TIME IS OF THE ESSENCE OF THIS OPTION AGREEMENT.
2. **Governing Law.** The parties intend and agree that this Option Agreement shall be governed by and construed in accordance with the laws of the State of Florida and that venue for the adjudication of any matter arising under the same shall vest and be in Osceola County, Florida.
3. **Severability.** If any portion of this Option Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Option Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Option Agreement.
4. **Attorneys' Fees.** If any lawsuit is filed which relates to or arises out of this Option Agreement, the prevailing party shall be entitled to recover from such other party such attorneys' fees and expert witness fees as the court may award, in addition to such other costs and expenses of suit as may be allowed by law.
5. **No Third Parties Benefitted.** No person other than OWNERS and CITY, and their authorized successors and permitted assigns, shall have any right of action under this Option Agreement. The City shall not assign or otherwise transfer this Option Agreement without Owners' prior written consent. Any attempted or purported assignment or transfer that contravenes this paragraph shall be null and void ab initio. If either party desires to effectuate a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code (and related regulations) in connection with the Option Parcels, the other party shall reasonably cooperate in structuring and consummating such like-kind exchange.
6. **Waivers.** No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provision. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY WITH

RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS OPTION AGREEMENT AND ACKNOWLEDGES THAT THIS WAIVER IS MADE KNOWINGLY, VOLUNTARILY AND AFTER CONSULTING WITH (OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH) COUNSEL OF ITS OWN CHOOSING AS TO THE MEANING OF THIS WAIVER.

7. **Captions.** The captions and Section numbers of this Option Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Option Agreement.
8. **Counterparts.** To facilitate execution, this Option Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
9. **No Presumption.** All the Parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Option Agreement, and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Option Agreement would be construed or interpreted against the party causing the document to be drafted.
10. **Notices.** Any notices or other communication required or permitted under this Option Agreement shall be in writing, and shall be (a) personally delivered, or sent by commercial courier for next Business Day delivery (e.g., UPS, FedEx Express) or certified or registered United States mail, postage prepaid, return receipt requested, to the individual and address of the Party set forth below or (b) emailed with confirmed receipt to the email address of the party. Such notice or communication shall be deemed given when delivered in person, when the commercial courier package or emailed is received or, in the case of U.S. Mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

OWNERS:

c/o Diamond Equity Ventures LLC
121 West Florence Blvd.
Casa Grande, AZ 85122

Attn: Mr. Yehoishiah Rubin
Email: shia@diamondequity.net

CITY:

City Manager
101 Church Street
Kissimmee, Florida 34741
Email: Mike.Steigerwarld@Kissimmee.gov

11. **No Recordation**. Neither this Option Agreement nor any memorandum of it shall be recorded in the land records.
12. **Compliance with all Laws.** Notwithstanding anything herein to the contrary, the due diligence during the Exploratory Period shall be conducted consistent with all applicable federal, state and local laws and regulations and all leases.

(SIGNATURES ON THE NEXT PAGE)

IN WITNESS WHEREOF, the parties hereto have executed these presents and have set their hands and seals as set forth below.

DIAMOND ELITE KISSIMMEE APARTMENTS, LLC

By: _____
Signature

Title: _____

DIAMOND ELITE KISSIMMEE, LLC

By: _____
Signature

Title: _____

CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor- Commissioner

Attest: _____
CITY Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

CITY Attorney

EXHIBIT A
PROPERTY DESCRIPTION

Hotel: 1815 W. Vine Street, Kissimmee Florida, 34741

Parcel ID: 16-25-29-1470-000D-0060

Tract 2: (Fee Simple Estate)

Lots 6, 7, 20, 21 of Block D of Green Acres, according to the map or plat thereof as recorded in Plat Book 1, Page 361, Public Records of Osceola County, Florida.

Apartments: 1555 Hollywood Street, Kissimmee, Florida 34741

Parcel ID: 16-25-29-1470-000C-0110

Tract 1: (Fee Simple Estate)

Being a portion of the Southwest 1/4 of the Southwest 1/4 of Section 16, Township 25 South, Range 29 East, in the County of Osceola, State of Florida, described as follows: Beginning at the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 16, said point lying on the center line of Vine Street 1334.14 feet Easterly of the centerline of Thacker Avenue, thence along the Easterly line of the Southwest 1/4 of the Southwest 1/4 of said Section 16, North 00°04'29" West 53.00 feet to the Northerly line of Vine Street, thence along said Northerly line of Vine Street West 319.00 feet, thence North 00°04'29" West 210.00 feet the true Point of Beginning; thence continuing North 00°04'29" West 318.39 feet to the Southerly right-of-way line of Hollywood Drive 50.00 feet wide; thence along said Southeasterly right-of-way line South 43°16'00" West 437.55 feet; thence East 299.99 feet to the Point of Beginning.

Tract 4: (Fee Simple Estate)

Lots 8 through 19, of Block D, of Green Acres, according to the map or plat thereof as recorded in Plat Book 1, Page 361, Public Records of Osceola County, Florida.

Tract 5: (Non-Exclusive Easement Estate)

TOGETHER WITH: Non-Exclusive Easement(s) as set forth and created by that certain Mutual Grant of Easement and Declaration of Covenant Agreement recorded April 21, 2015 in Official Records Book 4767, Page 240, Public Records of Osceola County, Florida, over, under and across the lands described therein.

EXHIBIT B
ACKNOWLEDGMENT AND MUTUAL RELEASE

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

R E C I T A L S:

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

A. Owner/Seller and City/ Buyer entered into that certain Option Agreement dated _____, 2023, whereby CITY was granted an option ("Option") to purchase the Option Parcels (as defined in the Option Agreement).

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

A G R E E M E N T:

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

To the extent permitted by the laws of the State of Florida, this Release applies to all described rights, claims, and actions, whether known or unknown, foreseen or unforeseen, present or future. However, nothing in this Release releases the City's obligations regarding confidentiality or indemnity that survive termination of the Option Agreement.

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

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

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

If any lawsuit is filed which relates to or arises out of this Release, the prevailing party shall be entitled to recover from each other party such attorneys' fees and expert witness fees as the court may, in addition to such other costs and expenses of suit as may be allowed by law.

CITY/BUYER:
CITY OF KISSIMMEE

OWNER/SELLER:
DIAMOND ELITE KISSIMMEE
APARTMENTS LLC.

City Manager

By: _____

Title: _____

Print Name: _____

OWNER/ SELLER:
DIAMOND ELITE KISSIMMEE, LLC

By: _____

Title: _____

Print Name: _____

ITEM 7.V

Authorization to transfer funds into an ongoing city-wide security project

Request

Authorization to transfer funds from a reserve account into a city-wide security project.

Explanation

In 2016, the City was issued a bond that allowed for the refinancing of various infrastructure projects. The issuance of this new bond lowered the monthly debt service payment, resulting in a revenue surplus from facility use fees collected.

To help the City Commission meet its goals of providing safe and secure venues and facilities, staff is recommending the transfer of \$121,732 from reserves to Capital Project CM2303, an ongoing project used to design and fund various security improvements across the entire City, including the various trail segments, parks, and venues.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10290700-509278	CM2303	Decrease		\$121,732
00110106-506393		Increase		\$121,732

Financial Summary:

Recommendation

City Commission approval to transfer \$121,732 from reserves into CM2303, a city-wide security project to fund various security improvements and enhancements.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager
Presenter: Austin Blake

Attachment(s):

None

ITEM 8.A

Advisory Board Vacancies: Board of Adjustment and Planning Advisory Board

Request

The Commission is requested to make an appointment to fill vacancies on the Board of Adjustment and Planning Advisory Board.

Explanation

Commissioner Castano appointed Jeniffer Salas to the Board of Adjustment on October 18, 2022, pending review of an application that was to be filed. Ms. Salas' application was received, but upon review she did not qualify for the position. She was notified and submitted a second application with changes but she still did not qualify for the position on the grounds she is not a City resident and does not own or operate a business in the City.

Seat #1 was originally assigned the Board of Adjustment vacancy, but it is being reassigned to Seat #1 due to the applicant not qualifying for appointment.

Planning Advisory Board Member, Jackie Espinosa missed more than half of the scheduled meetings for the calendar year of 2022 and also missed three consecutive scheduled meetings. City Code Section 2-146, states that "in the event that an appointee misses three consecutive meetings or at least one-half of the meetings of the calendar year, he shall be considered to have resigned and a new replacement may be appointed."

Seat #2 will be assigned to the Planning Advisory Board vacancy.

Planning Advisory Board Member, Jeffrey Wolff missed more than half of the scheduled meetings for the calendar year of 2022. City Code Section 2-146, states that "in the event that an appointee misses three consecutive meetings or at least one-half of the meetings of the calendar year, he shall be considered to have resigned and a new replacement may be appointed." Mr. Wolff's term is set to expire on May 31, 2023. If an appointment is made, City staff requests that the appointment be made for the remainder of the term, plus an additional three (3) full year term, expiring on May 31, 2026.

Seat #3 will be assigned to the additional Planning Advisory Board vacancy.

The Commissioners will have 30 days to make an appointment. If no extension is requested, the appointment will automatically roll over to the next Commissioner in the rotation.

Commissioner Rotation:	Date Assigned:	Advisory Board:	Appointment Expires:	Requirements:
Seat #1 - Castano <i>*No applications currently on file*</i>	09/13/2022 12/06/2022 (reassigned) Assignment Expires: 1/17/2023	Board of Adjustment	05/31/2023	City Resident and must have a Florida License as an Engineer, Architect, Surveyor or Contractor. Members may be a resident or non-City resident; non-residents must either own real property or maintain a business office within the City.

Seat #2 - Eady <i>*No applications currently on file*</i>	1/17/2023	Planning Advisory Board	05/31/2024	Member must be a City resident or maintain a business office within the City.
Seat #3 - Alvarez <i>*No applications currently on file*</i>	1/17/2023	Planning Advisory Board	05/31/2023 (requesting filling of partial term, plus new three (3) year term, ending 05/31/2026	Member may be a resident or non-City resident; non-residents must either own real property or maintain a business office within the City.

Recommendation

Staff recommends the Commission make appointments to fill vacancies on the Board of Adjustment and Planning Advisory Board.

REQUESTED CITY COMMISSION ACTION:

Appoint/Reappoint

Department: City Manager

Presenter: Mike Steigerwald

Attachment(s):

None